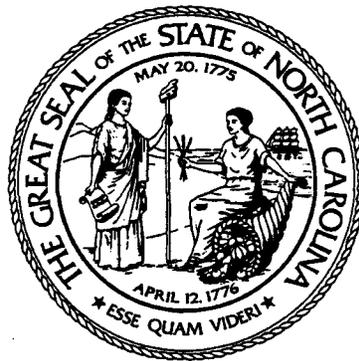


LEGISLATIVE RESEARCH COMMISSION

**Workers' Compensation**



REPORT TO THE  
1995 GENERAL ASSEMBLY  
OF NORTH CAROLINA  
1996 REGULAR SESSION

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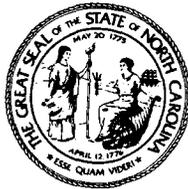
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STATE OF NORTH CAROLINA  
LEGISLATIVE RESEARCH COMMISSION  
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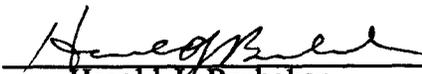


May 13, 1995

TO THE MEMBERS OF THE 1995 GENERAL ASSEMBLY (REGULAR SESSION 1996):

The Legislative Research Commission herewith submits to you for your consideration its interim report on Workers' Compensation. The report was prepared by the Legislative Research Commission's Committee on Workers' Compensation pursuant to G.S. 120-30.17(1).

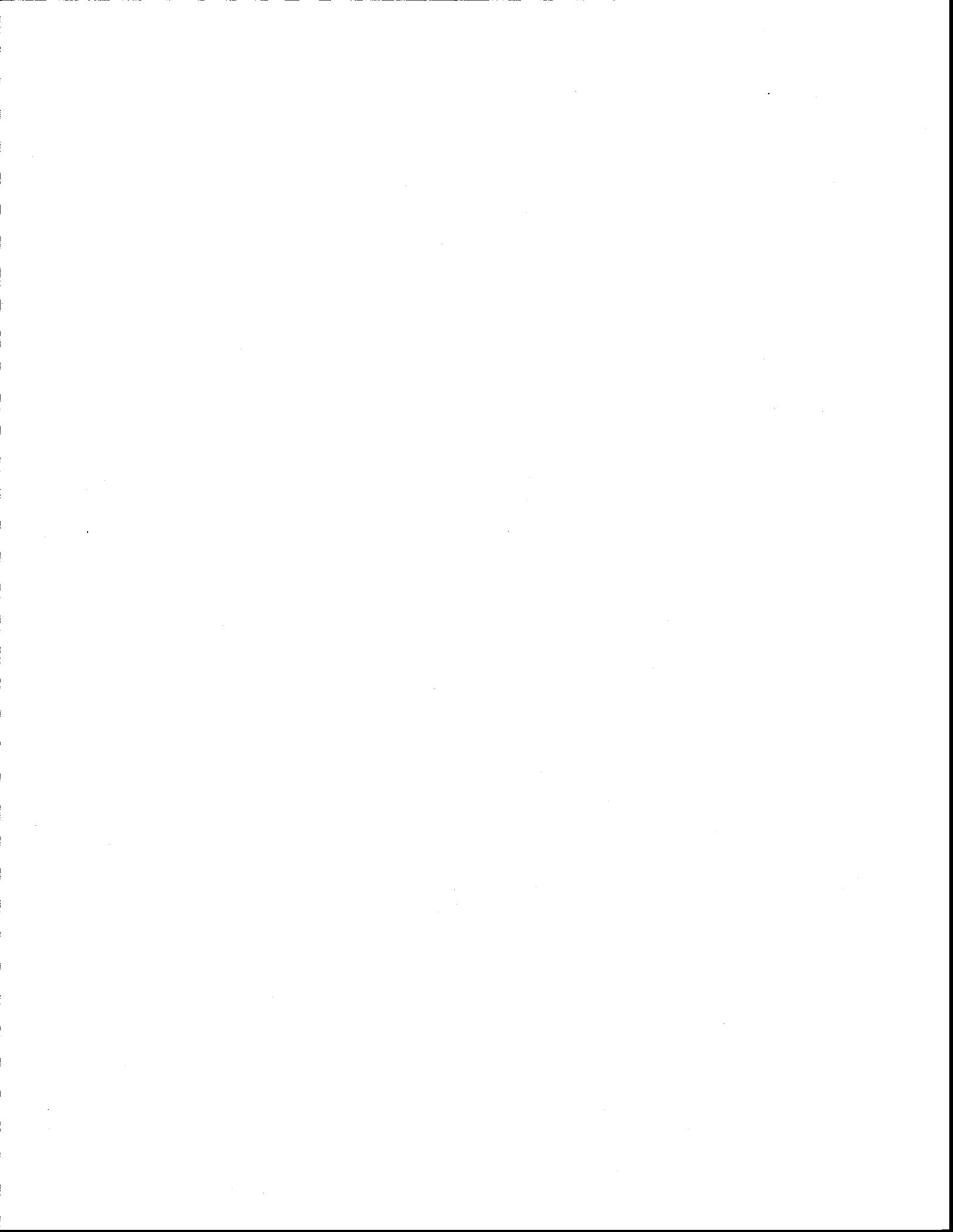
Respectfully submitted,

  
Harold V. Brubaker  
Speaker of the House

  
Marc Basnight  
President Pro Tempore

Cochair  
Legislative Research Commission





1995-1996

LEGISLATIVE RESEARCH COMMISSION

MEMBERSHIP

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## PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1995 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of Workers' Compensation was authorized by Section 2.7 of Chapter 542 of the 1995 Session Laws. The relevant portions of Chapter 542 are included in Appendix A. The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Labor and Personnel area under the direction of Representative Gregory J. Thompson. The Committee was chaired by Senator John H. Kerr III and Representative Shawn Lemmond. The full membership of the Committee is listed in Appendix B of this report. A committee

notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

## COMMITTEE PROCEEDINGS

### January 19, 1996 Meeting

At its first meeting January 19, 1996, the Committee heard a description of the subject matter it was charged with studying. Mr. Linwood Jones, a staff counsel, summarized Senate Bill 906, Chapter 679 of the 1993 Session Laws, the issues of which the Committee was required not to re-open. Mr. Lex Larson, President of Employment Law Research, Inc., made a background presentation on Workers' Compensation in North Carolina. (See Appendix D.) Chairman Howard Bunn of the Industrial Commission, spoke concerning the administrative needs of his agency. (See Appendix E.) Deputy Insurance Commissioner Dascheil Propes discussed the effect of the assigned risk pool on small business and the funding of workers' compensation for volunteer fire departments and rescue/EMS squads. Mr. Mark Trogdon and Mr. Karl Knapp of the Fiscal Research Division discussed the current funding mechanisms of the Industrial Commission. (See Appendix E.) The Co-Chairs named a Subcommittee to address the issue of allowing subcontractors to waive the requirement of workers' compensation coverage, to be chaired by Rep. Bobbie Harold Barbee, with the following other members: Senator Donald Kincaid, Mr. William Stephenson, and Mr. Brad Mook.

### February 19, 1996 Meeting

At its second meeting on February 19, 1996, the Committee heard perspectives from users of the workers' compensation system: An employer, Mr. Al Allison of Charlotte, and an employee, Mr. Roger Lewis of Siler City. Representatives of the Industrial Commission, the State Health Benefits office, and the North Carolina Hospital Association addressed problems that have occurred in the diagnostic-related grouping (DRG) method of reimbursing hospitals. Ms. Lou Kost of the Office of State Personnel reported on workers' compensation for State employees. (See Appendix I.) Deputy Insurance Commissioner Dascheil Propes gave an explanation of ratemaking, classifications, and experience modifiers. Rep. Barbee reported that his Subcommittee on Subcontractor Waivers would meet March 6.

### March 6, 1996 Meeting

The Committee's third meeting, on March 6, 1996, was devoted to the issue of providing workers' compensation for volunteer fire and rescue/EMS units. Mr. Cloyce

Anders, Chair of the Volunteer Safety Workers' Compensation Board, told the Committee that the Workers' Compensation Fund established by the 1995 General Assembly to provide such coverage needs \$3 million in addition to the \$1.5 million it is now getting from member units and the \$1.5 million the General Assembly appropriated it for the 1996-97 fiscal year. (See Appendix G.) Mr. Tony Goldman and Mr. Stanley Moore of the Fiscal Research Division gave a background report on the six funds mentioned for study in Section 7.21A of Chapter 507, the budget bill. (Also see Appendix G.)

#### April 2, 1996 Meeting

At its fourth meeting, on April 2, 1996, the Committee considered an agenda that was based upon the contents of a draft interim report prepared by staff counsel and sent to the members at the request of the Co-Chairs a week before the meeting. The Committee approved the following five LEGISLATIVE PROPOSALS to be recommended to the 1996 Short Session:

1. VFD/EMS Funding. A \$3 million additional appropriation from the General Fund to the Workers Compensation Fund of the Fire and Rescue Commission for the 1996-97 fiscal year. (See LEGISLATIVE PROPOSAL II.) An alternative proposal to take the \$3 million per year from the statutory designation of individual income tax revenues to local governments to replace money lost in the repeal of the intangibles tax. The Committee chose instead the direct appropriation for one fiscal year.
2. Hospital Reimbursement. An interim plan for reimbursement of hospitals for medical compensation for workers comp. The current diagnostic-related groupings (DRG) method would be preserved but modified from April 1, 1996 to June 30, 1997. The modification during that period would be that no hospital would be reimbursed more than 100% of the amount of the actual bill, and no less than 90% of the actual bill, provided that hospitals would not bill higher for workers' comp during that period than for like procedures for non-workers' comp bills. (See LEGISLATIVE PROPOSAL III.)
3. Indigents' Appeals. Removal of language requiring an attorney's opinion and written statement in appeals by indigents from the Industrial Commission to the N.C. Court of Appeals. (See LEGISLATIVE PROPOSAL IV.)
4. Felony Fraud Penalty. The upgrading of workers' comp fraud from a Class 1 misdemeanor to a Class H felony. This would conform workers' comp fraud to the statute for insurance fraud. The Committee amended this proposal to upgrade

two related offenses from Class 1 misdemeanors to Class H felonies. (See LEGISLATIVE PROPOSAL V.)

5. Loss Costs Technical Corrections. The correction of some outdated citations and references that resulted from the enactment in 1995 of the Loss Costs Law and the Self-Insurance Regulation Act. (See LEGISLATIVE PROPOSAL VI.)

The Committee heard presentations of the following proposals that were included in the draft report, but it did not recommend them to the Short Session:

- \* A proposal to give the Industrial Commission a \$15 million per year block grant from workers' comp premium tax funds. Under this proposal, offered by Co-Chair Lemmond, the Industrial Commission would have broad discretion in using the grant, but would be required to reduce the average length of a workers' comp case to six months by 1997. In conjunction with the request, Chair Bunn of the Industrial Commission gave a summary of his administrative budgetary requests.
- \* A proposal to shift from the employer to the employee the burden of proving the role of alcohol or drugs in a workplace accident. This proposal was part of House Bill 143, introduced by Co-Chair Lemmond in the 1995 General Assembly.
- \* Related proposals to increase the threshold of reporting claims to the Industrial Commission and to provide that losses paid by an employer under a deductible in a workers' comp claim would not be used to affect that employer's experience modification. The proposals were initiated by Co-Chair Lemmond; at his request, Mr. Jerry Hamrick of the North Carolina Rate Bureau spoke to the Committee on the ratemaking process to which the proposals were addressed.

The Subcommittee on the Subcontractor Waiver, appointed in January, had met in February and March and voted to recommend that the Committee not make a recommendation on the issue to the Short Session. Co-Chairs Kerr and Lemmond, had responded by indicating that the Committee needed to address the problem in the Short Session. At the April 2 Committee meeting, Sen. Donald Kincaid, one of the members of that subcommittee, said that its members had agreed that morning on an interim solution: Repeal the 1995 change to G.S. 97-19 so that subcontractors could once again waive the requirement to have workers' compensation, but sunset the repeal while the issue was studied further. Co-Chairs Kerr and Lemmond, however, said that their instructions from the leadership of both houses was that the Committee should attempt to find a permanent solution to the problem, and they scheduled another meeting of the Subcommittee for April 12 and announced that they, too, would attend.

April 19, 1996

At its fifth meeting, on April 19, 1996, the Committee was told of the recommendation of the Subcommittee on the Subcontractor Waiver at its meeting on April 12. The Subcommittee on April 12 had recommended returning the law regarding the requirement of subcontractor workers' compensation coverage to its pre-1987 state, in which subcontractors who had no employees were not required to obtain such coverage. The members of the full Committee had received that proposal in a draft report sent to them before the April 19 meeting. That proposal is included as LEGISLATIVE PROPOSAL I.

## FINDINGS AND RECOMMENDATIONS

### FINDING I -- SUBCONTRACTOR WAIVER.

The Committee finds that since the elimination in 1995 of the waiver provision for subcontractors under the workers' compensation law, many sole proprietors doing work as subcontractors have objected to elimination of the waiver, especially in light of the costs of workers' compensation coverage. (See Appendix F.) The Committee finds that the requirement that subcontractors with no employees have workers' compensation coverage was enacted in 1987 at a time when sole-proprietor subcontractors were unable to get coverage. Now they are able to get coverage (because of another provision in the same 1995 bill that eliminated the waiver). The Committee finds that, in the new context, eliminating the requirement of subcontractor coverage is a promising solution to a difficult problem.

### RECOMMENDATION I.

The Committee recommends that G.S. 97-19 be amended so that it reads as it did before 1987, when the requirement was added that subcontractors without employees must have workers' compensation coverage. (See LEGISLATIVE PROPOSAL I.)

-----

### FINDING II -- WORKERS' COMP FOR VOLUNTEER FIRE & RESCUE/EMS UNITS.

The Committee finds that the Workers' Compensation Fund was established in 1995 in the Department of Insurance to provide workers' compensation coverage for volunteer fire, rescue, and EMS workers. The legislation establishing the Fund provided for funding through contributions from the units, to be set by the State Fire and Rescue Commission, and through a \$1.5 million General Fund appropriation for the 1996-97 fiscal year. The combined amount is \$3 million in funding. The legislation also created the Volunteer Safety Workers' Compensation Board to assist the Fire and Rescue Commission in providing workers' compensation to the volunteer units. That Board has recommended that an additional \$3 million be appropriated for the Fund for 1996-97. (See Appendix G.)

### RECOMMENDATION II.

The Committee recommends that the General Assembly appropriate an additional \$3 million to the Workers' Compensation Fund for fiscal 1996-97. (See LEGISLATIVE PROPOSAL II.)

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### FINDING III -- HOSPITAL REIMBURSEMENT.

The Committee finds that the tying of workers' compensation hospital reimbursements to the reimbursement method used by the Teachers' and State Employees' Comprehensive Major Medical Plan has resulted in a number of complaints from employers, particularly employers who self-insure. The State Plan, at the urging of the North Carolina Hospital Association, has adopted the diagnostic-related grouping (DRG) method of reimbursement, under which hospitals are reimbursed a standard rate for type of treatment rather than according to a specific bill. The number of DRG reimbursements that are significantly higher than the bill has led to questions about the appropriateness of the DRG method for workers' compensation. A group including representatives of hospitals, insurance companies, and self-insured employers agreed April 1, 1996 on a compromise, part administrative and part legislative, to deal with the problem on an interim basis. (See Appendix H.)

### RECOMMENDATION III.

The Committee recommends that for an interim period from April 1, 1996 to June 30, 1997, the hospital's DRG reimbursement will not be higher than the amount the hospital actually billed the patient, and it will not be lower than 90% of the amount billed. During the interim period, hospitals would be required to keep their charges in workers' comp cases at the same level as those for comparable services in non-workers' comp cases. Upon the sunset of this system on June 30, 1997, the law would revert to what is in effect now: the tying of workers' comp hospital reimbursements to the State Plan. This legislative proposal is part of the compromise worked out by interested parties on April 1. (See LEGISLATIVE PROPOSAL III.)

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### FINDING IV -- IN FORMA PAUPERIS APPEALS.

The Committee finds that currently, an indigent party who appeals a workers' compensation decision by the Industrial Commission to the Court of Appeals must have an affidavit from a practicing attorney that says that the attorney has reviewed the case and believes the appeal has merit. Other appellants must post a bond when they appeal a Commission decision to the Court of Appeals, but indigents cannot afford to post bond. The attorney certification requirement was designed to serve as a check against frivolous appeals by indigents. The 1993 General Assembly, however, removed an identical requirement for indigents appealing claims from the trial courts to the Court of Appeals (G.S. 1-288). There is no compelling reason to retain the attorney certification requirement for appeals of workers' compensation decisions. A person still must prove his or her indigency in order to appeal as an indigent. The decision to allow the appeal as an indigent rests in the discretion of a commissioner or deputy commissioner of the Industrial Commission.

#### RECOMMENDATION IV.

The Committee recommends removing the requirement for attorney certification of the merits of an appeal by an indigent person of a Industrial Commission decision to the North Carolina Court of Appeals. (See LEGISLATIVE PROPOSAL IV.)

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#### FINDING V -- FELONY FRAUD FOR WORKERS' COMPENSATION.

The Committee finds that confusion may result from the inconsistent penalty designation of insurance fraud generally and workers' compensation fraud. General insurance fraud is a Class I felony; workers' compensation fraud is a Class 1 misdemeanor. The two criminal statutes are so similar that it is unclear which statute would apply in a given case. Similar changes should also be made to other offenses created by the 1994 reform law.

#### RECOMMENDATION V.

The Committee recommends making workers' compensation fraud a Class H felony, like insurance fraud. The Committee also recommends raising the penalties for coercing an employee to settle and for a health care provider charging an employee for medical services incurred for treatment of a compensable workers' compensation injury. (See LEGISLATIVE PROPOSAL V.)

**FINDING VI -- CLEANUP OF LOSS COSTS LAW.**

The Committee finds that the enactment of two bills in 1995 resulted in an outdated reference in one of them. Senate Bill 973 (Loss Costs) changed the method of rate-making for workers' compensation insurance so that the North Carolina Rate Bureau no longer sets a final rate. Senate Bill 931 (Self-Insured Employers) established procedures for rate-making by self-insured pools. SB 931 inadvertently contained a reference to the old method of rate-making.

**RECOMMENDATION VI:**

The Committee recommends that the outdated reference be corrected. (See Legislative Proposal VI.)

## APPENDIX A

### CHAPTER 542

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, TO MAKE VARIOUS STATUTORY CHANGES, AND TO MAKE TECHNICAL CORRECTIONS TO CHAPTER 507 OF THE 1995 SESSION LAWS.

The General Assembly of North Carolina enacts:

#### PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1995".

#### PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.7. Workers' Compensation (S.J.R. 996 - Kerr). The Legislative Research Commission may study the effect of the assigned risk pool on small employers, the funding mechanisms of the Industrial Commission, workers' compensation premium tax, or any other matter raised by the Chairman or Advisory Panel of the Industrial Commission; provided, however, the Legislative Research Commission shall not study any matter contained in the original or any subsequent version of Senate Bill 906, the legislation that led to the Workers' Compensation Reform Act of 1994. The Commission may also study the issue of funding of workers' compensation for volunteer fire department and rescue squad members.

Sec. 2.8. Committee Membership. For each Legislative Research Commission committee created during the 1995-96 biennium, the cochairs of the Legislative Research Commission shall appoint the committee membership.

Sec. 2.9. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1996 Regular Session of the 1995 General Assembly, if approved by the cochairs, or the 1997 General Assembly, or both.

Sec. 2.10. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.11. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission....

**PART XXVI.-----EFFECTIVE DATE**

Sec. 26.1. This act is effective upon ratification.

**APPENDIX B**

**WORKERS' COMPENSATION COMMITTEE  
MEMBERSHIP  
1995 - 1996**

**LRC Member:** Rep. Gregory J. Thompson  
PO Box 574  
Spruce Pine, NC 28777  
(704) 765-1992

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Rep. Bobby H. Barbee, Sr.  
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(704) 888-4423

Rep. Hugh A. Lee  
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Rep. Daniel F. McComas  
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**Clerk:**

Ms. Linda Hines  
417-C LOB  
(919) 715-3015



# Senate Bill 906 -- Summary of Ratified Act.

Workers' Compensation Reform (SB 906; Chapter 679): Senate Bill 906 is designed to achieve cost savings in the workers' compensation system by, among other things, controlling medical fees, medical utilization and the time period for claiming additional medical compensation, reducing the costs incurred by employers, insurance carriers, and the Industrial Commission in administering the system, and reducing fraud in the system.

Senate Bill 906 is known as the Workers' Compensation Reform Act of 1994 and is divided into the following Parts:

## Part I. Title

The Act is known as the Workers' Compensation Reform Act of 1994 and is referred to in this summary as "the Act."

## Part II. Medical

The Act gives the Commission the clear statutory authority to regulate medical fees for physicians and all other providers other than hospitals. Each hospital's reimbursement will be the same as its reimbursement under the State Health Plan. Additional savings on hospital costs through more efficient treatment utilization are anticipated when the hospital reimbursement system for workers' compensation follows the State Health Plan's upcoming move to a DRG (diagnostic-related groups) system.

To further contain medical costs, the Act allows the Commission to adopt utilization guidelines for medical treatment, expressly authorizes the use of managed care organizations such as health maintenance organizations (HMOs) and preferred provider organizations (PPOs) for the delivery of medical care to injured workers, and permits employers to require employees to obtain prior authorization for inpatient admissions and surgeries. In addition, the Commission is encouraged to adopt guidelines on the appropriate use of palliative care. Providers rendering palliative care may be required to provide employers with specific treatment plans indicating the anticipated length and cost of treatment; they may also be required to obtain prior authorization for these treatments. The Commission has been vested with the power and duty to ensure that these medical cost containment features are used in a manner consistent with the rights of employees to prompt medical care for workplace injuries.

The Act also makes two changes concerning medical compensation. One of these changes addresses last year's Supreme Court decision in *Hylar v. GTE Products*, §333 NC 258, 425 SE2d 698 (1993). The *Hylar* decision eliminated what had historically been interpreted as a 2-year statute of limitations on an employee's ability to apply for additional medical compensation. The insurance industry has stated that the *Hylar* decision alone could increase workers' compensation costs an additional 15 to 25 percent. The Act re-imposes the 2-year statute of limitations on claims for additional medical compensation. Once an employee receives his or her last payment workers' compensation benefit, whether medical or indemnity, the employee has 2 years in which to file for additional medical compensation. The Commission can order additional medical compensation for the employee only if it finds that there is a "substantial risk" of the need for such compensation. The Commission can also order

additional medical compensation on its own motion, but only if it does so within the same 2-year limitations period.

The other change regarding medical compensation allows employees to have their prosthesis replaced if ordinary wear and tear on the prosthesis or a change in the employee's medical circumstances necessitates replacement.

### Part III. Compensation

Part III of the Act provides for two fundamental changes in the payment system for indemnity compensation benefits. The two changes are generally referred to as "direct pay" and "pay without prejudice." "Direct pay" allows the employer to pay benefits to the employee without requiring the signing of a memorandum of agreement between the employer and employee and without Commission approval, both of which are mandated under current law. Direct pay streamlines the system for paying compensation to employees, thereby allowing employees to be paid quicker and potentially reducing some of the paperwork and costs incurred by employers, insurers, and the Commission in administering the current system. The Act limits the use of direct pay, however, and makes clear that the absence of a memorandum of agreement in the situations in which direct pay is used will not impair the Commission's jurisdiction over the claim in the event of a dispute.

If an employer is uncertain whether an employee's claim is compensable, it can "pay without prejudice" to the employee while it investigates to determine whether the claim is in fact a compensable workplace injury, and if so, whether it or another employer (or insurer) is liable for the injury. The "payment without prejudice" feature allows the employee to receive compensation for a claim that, under the current law, might be denied by the employer because of the employer's reluctance to bind itself to payment of a claim that it is uncertain about. The employer making these payments retains its rights, within a specified time period, to terminate payments made without prejudice if it determines either that the claim is not compensable or that it is not liable. As with direct pay, several safeguards have been added to the bill to prevent the misuse of payment without prejudice. For example, the period specified for payment without prejudice is 90 days (plus 30 additional days if granted by the Commission). During this period, the employer must decide whether it is going to admit or deny liability for the employee's injury.

The Act also spells out when and how an employee's temporary total disability benefits (in essence, those received while out of work and healing from the injury) can be terminated. The Act goes into considerable detail on this matter because of a recent Court of Appeals opinion prohibiting termination until the Commission can hold a full hearing in the case. (The decision has been stayed while the Supreme Court reviews the appeal on this matter). Under the Act, if the employee has returned to work, the employer can terminate the benefits as under the current law (subject to a new provision in the law concerning trial return to work). If the employer is paying the employee without prejudice, it can also terminate the employee's benefits when it decides, timely, to deny the claim. If an employer proposes termination on other grounds, and the employee objects, the matter must be decided by the Commission. The gist of the procedural detail in the Act is that an employer's termination request will be addressed promptly, but only after both the employer and employee have had an opportunity to state their positions. Specific provisions have been made for the Commission to schedule hearings on termination matters on a priority basis.

The Act does not disturb recent appellate decisions that allow employees, in appropriate cases, to (1) obtain lifetime benefits when their injuries, combined with their age and lack of education, skills, and training, effectively rule out future meaningful employment (*Whitley, Gupton*) (*Whitley v. Columbia Lumber Mfg. Co.*, 318 NC 89,

348 SE2d 336 (1986); *Gupton v. Bldrs. Transport*, 320 N.C. 38, 357 SE2d 674 (1987)) and (2) sue their employers for injuries resulting from conditions which the employers knew or should have known were substantially certain to cause serious injury or death *Woodson v. Rowland*, 329 NC 330, 407 SE2d 222 (1991).

In an effort to clarify an area of recent litigation, the Act also provides that an employer is to be credited for payments on a week-by-week basis for any compensation it paid out under an employer-funded salary continuation, disability, or other income-replacement plan.

#### Part IV. Trial Return to Work

Concern has been expressed about the increase in the average number of days that workers' compensation claimants remain out-of-work. The current presumption in the law that employees are no longer disabled when they return to work discourages employees who fear their injuries might worsen from returning to work. If they return to work and their injury disables them again, they could face several months, perhaps longer, in re-establishing their disability and getting their benefits restored. To encourage these employees to return to work, the Act provides for a nine month "trial return to work period," a concept already used for Social Security disability claimants. Under the trial return to work period, if the employee returns to work but is forced to stop again during the nine-month period because of the injury or illness, the employee's rights to compensation benefits are not impaired.

#### Part V. Administrative

Several changes are set out in Part V to enhance the operation of the Industrial Commission and the administration of the workers' compensation system. First, the Act creates an ombudsman program. The ombudsman will assist unrepresented employees in understanding their rights under the Workers' Compensation Act. Although the ombudsman cannot represent these employees, he or she can contact an employer or insurer on behalf of the employee to help with the claim. Second, the Act provides for the creation of an Advisory Council. The Advisory Council, to be appointed by the Commission Chairman, will assist the Chairman in evaluating and shaping Commission policy, developing rules and forms to carry out the provisions of the Workers Compensation Act, and proposing legislative recommendations.

Other administrative provisions include a clarification of the Commission's contempt powers, the retention of the mediation provisions enacted by the General Assembly last year (subject to the 1995 expiration date enacted last year), and the imposition of maximum fees on medical record copies, medical reports, and the presentation of expert testimony. Additionally, discovery procedures are modernized for Commission proceedings. These changes are designed to reduce litigation, curb costs, and help the Commission continue its long-standing statutory duty to ensure that claims are handled as promptly as possible.

#### Part VI. Second Injury Fund

The Second Injury Fund provides a financial incentive for employers to hire workers who have suffered previous workplace injuries by transferring the risk of a subsequent, and potentially permanently and totally disabling, injury from the employer to the Fund. The Fund is delinquent in its obligations to claimants, and the increased

assessment will allow the Fund to cover its current obligations and begin addressing additional claims for compensation under the Fund.

### Part VII. Penalties for Fraud and Misrepresentation

Fraud in the workers' compensation system can be committed in any number of ways -- by employees fraudulently obtaining benefits, by employers fraudulently denying benefits, or by providers fraudulently submitting medical bills. Part VII of the Act provides criminal penalties for employees who fraudulently obtain benefits and for employers and insurers who fraudulently deny benefits. Health care providers are also subject to criminal penalties for filing fraudulent medical bills, plus civil penalties for fraudulently rendering unnecessary medical treatment and violating the physician self-referral prohibitions enacted last year.

### Part VIII. Workers Compensation Insurance

With a few exceptions, every employer with 3 or more employees must carry the insurance or qualify as a self-insurer.

Although there are existing fines for employers who fail to insure or self-insure and although these employers can be sued by their employees for workplace injuries, the Act provides additional resources for tackling the uninsured problem. The North Carolina Department of Revenue is required to solicit from employers the names of their workers' compensation insurance carriers and the number and expiration dates of their policies. If self-insured, the employers will report the name of their self-insurance group, if applicable, and the names of the third parties that administer their self-insurance programs.

In addition, two other measures have been adopted to help curb the uninsured problem. First, the Act authorizes the Commission to levy a civil penalty against any person who had the authority and ability to insure or self-insure the employer, but intentionally failed to do so. The civil penalty can be in an amount sufficient to cover the medical and indemnity costs of any employees who are injured while the employer is without insurance. Second, the bill codifies into law the Industrial Commission's rule that each employer must post a notice in the workplace that it is insured or qualifies as a self-insurer and adds that if the employer allows coverage to lapse or no longer qualifies as a self-insurer, the notice must be removed.

A separate issue concerning insurance is the rising percentage of businesses whose workers' compensation coverage is provided through the assigned-risk pool. Employers in the pool, many of whom are small businesses, face additional surcharges and fees. Under Part VIII of the Act, an employer unable to find coverage in the voluntary market can request that its name and relevant information, such as its type of business and loss experience, be listed on an "electronic bulletin board" operated by the North Carolina Rate Bureau. The Rate Bureau can circulate the information to its member carriers to assist the employer in obtaining coverage in the voluntary market. In addition, the Commissioner of Insurance is directed to study the assigned risk pool and to report back to the General Assembly early next year with any recommended legislation. The Commissioner may also study the current rate-making system for workers' compensation insurance.

## Part IX. Attorneys' Fees

Part IX of the Act deals with attorneys' fees. In determining the reasonableness of an attorney's fees, the Commission must look at the record to determine the services rendered. The Commission can look at, among other things, the time invested by the attorney, the attorney's experience, whether the fee is fixed or contingent, and the customary fee involved. If the Commission finds the attorney's fees unreasonable and the attorney appeals to the senior resident superior court judge, both the Commission and the employee must be notified, and they have the right to appear and contest the attorney's appeal for higher fees.

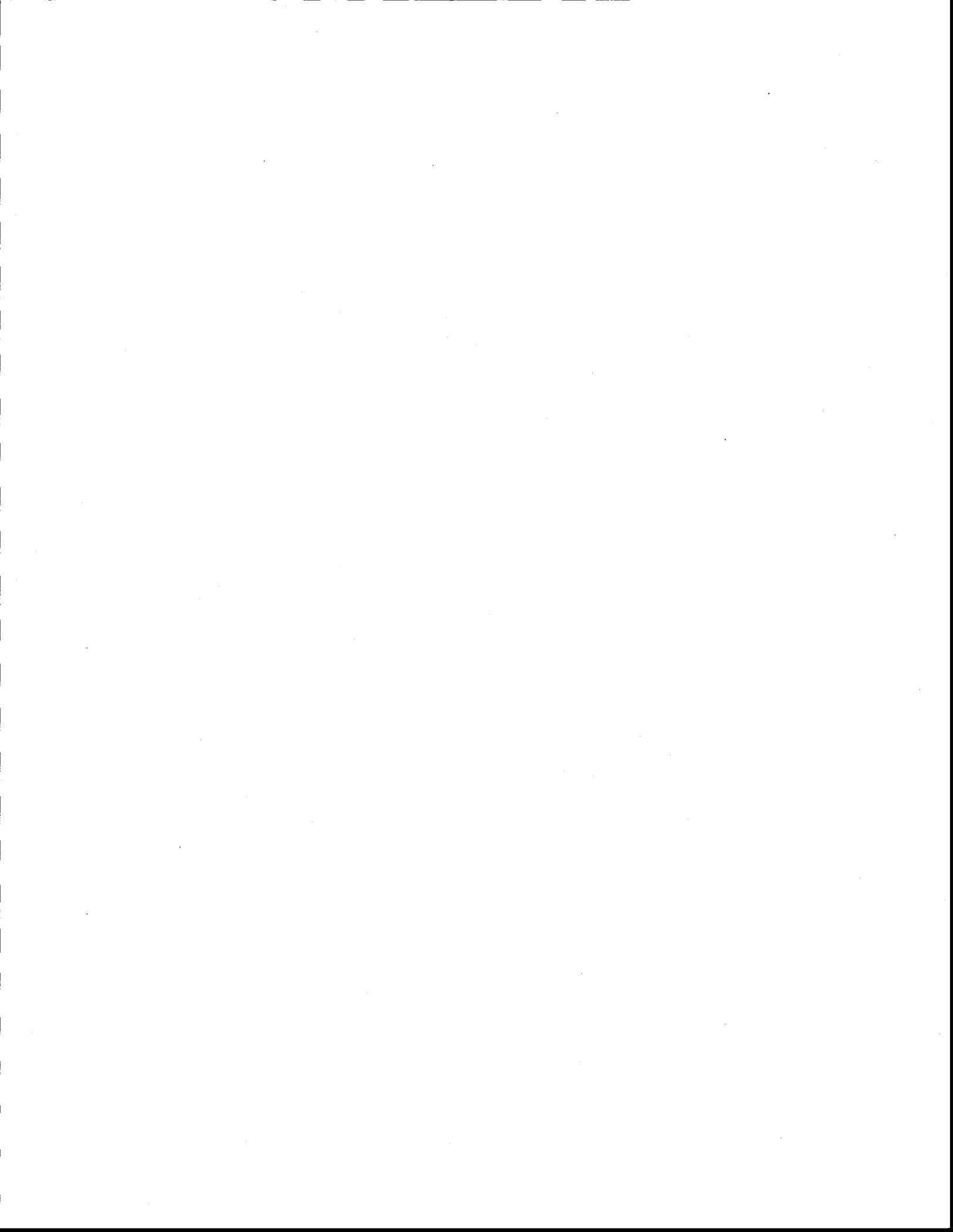
In addition, the Commission can deny an attorney his or her fees if it finds that the attorney solicited the client for employment in violation of the Rules of Professional Conduct of the State Bar.

## Part X. Miscellaneous

Part X of the Act involves technical and conforming changes including the following: authorizing the Commission to allow the use of electronic submission of forms, requiring the State Health Plan to provide information needed by the Commission to develop fee schedules and determine appropriate reimbursement to providers, making clear that the Department of Insurance's regulatory authority over PPOs is applicable in workers' compensation PPOs, extending to members and deputies of the Commission the authority to allow paupers to appeal without security, defining the terms "health care provider" and "managed care organization," and codifying the Commission's rule concerning employers' reports of injuries to the Commission.

## Part XI. Effective Date

Part XI sets out the effective dates of various provisions in the Act, ranging from July 1, 1994 until January 1, 1995.



## APPENDIX D

### NORTH CAROLINA LEGISLATIVE RESEARCH COMMISSION STUDY COMMITTEE ON WORKERS' COMPENSATION

Statement of Lex K. Larson<sup>1</sup>

January 19, 1996

I've been asked to give a brief perspective of Workers' Compensation in general and the North Carolina system in particular. I'm most appreciative of the opportunity to do this.

**General:** Worker's compensation is a social insurance system that provides cash compensation for wage loss and medical care to victims of work-connected injuries. This is done on a no-fault basis: that is, (1) it's not necessary to show the employer was at fault for an employee to recover compensation; and (2) in general, employee contributory negligence won't foreclose compensation.

Workers' Compensation was the first great social insurance legislation in this country: between 1910 and 1920 workers' compensation legislation was enacted in all but eight states.<sup>2</sup>

Before these systems were in effect, injured workers who could no longer work were usually thrust into poverty, except for the very few who, after lengthy and expensive court proceedings, were able to prove fault on the part of the employer. Introducing workers' compensation represented a social decision

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<sup>1</sup> Lex K. Larson is the president of Employment Law Research, Inc. in Durham. In 1993 he assumed the authorship of Larson, *Workmen's Compensation Law*, as well as the Desk Edition of the same, and he is author of three other legal treatises on various facets of employment law. He is a member of the North Carolina Industrial Commission Advisory Council. In addition, he is a mediator, certified in the N.C. Superior Court program as well as in the Industrial Commission's mediation program.

<sup>2</sup> North Carolina came in comparatively late, introducing its system in 1929. However, it wasn't the last - it took until almost 1950 for the last state to come into the system.

that this is not the right way to treat a productive American worker who loses his or her income because of a work-connected injury. Instead, he or she should be regarded as an honorable veteran of the workforce and should be provided for in a way that maintains his or her dignity.<sup>3</sup>

The tradeoff for employees is that, while the number of circumstances of compensation is greatly increased, there is no effort to fully compensate for all facets of injury; instead, compensation was set at a level designed to alleviate hardship. Due to exclusive remedy provisions, a covered employee may no longer recover large tort-style damages.

Another feature typical of a workers' compensation system, which historically benefited both the worker and the employer, was an administrative claims processing procedure which was quick and easy to use compared to the traditionally lengthy and convoluted court procedures.

Compared to today's statutes, the original systems were crude affairs, having large gaps which allowed many injured workers to go uncompensated or undercompensated. By and large, the subsequent history of workers' compensation has been the story of filling in these gaps.

**Optional coverage:** The first kind of gap had to do with employers and employees who were excluded from the system. Historically, many of the systems were optional; that is, employers could choose whether or not to come within the system.

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<sup>3</sup> Put another way, the idea of workers' compensation is that the wear and tear of human beings should be a cost of doing business just as is the wear and tear on machines. See *Vause v. Vause Farm Equipment Co.*, 233 N.C. 88, 63 S.E.2d 173 (1951).

North Carolina's system remained optional, at least technically,<sup>4</sup> until it became mandatory for most employers in 1972.

**Exclusion of small employers:** Also, many Acts applied only to employers having more than a certain minimum numbers of employees. For example, North Carolina's minimum was originally five, meaning that that an injured worker in a workforce of four could go uncompensated. NC's minimum was reduced to four in 1972, and to three in the early eighties, where it remains to this day. To place today's North Carolina Act in perspective, thirty-seven states, the District of Columbia, and Puerto Rico no longer have minimums at all; that is, in those states employers of even one employee are subject to the system.<sup>5</sup> Six other states have the same minimum as North Carolina,<sup>6</sup> and seven states have higher minimums.<sup>7</sup>

**Exclusion of farm workers:** Another not-uncommon coverage exception is for agricultural workers. North Carolina covers agricultural workers only if the employer has ten or more full-time non-seasonal employees.<sup>8</sup> Around the country, fourteen states cover agricultural workers in the same fashion as any

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<sup>4</sup> I'm told that by that time there were already considerable incentives and pressures for employers to come within the system.

<sup>5</sup> For a listing of these states, see U. S. Department of Labor, "State Workers' Compensation Laws", January 1995, Table 2.

<sup>6</sup> Arkansas, Georgia, Michigan, New Mexico, Virginia, and Wisconsin. *Id.*

<sup>7</sup> Rhode Island, South Carolina, and Florida have a minimum of four employees; and Alabama, Mississippi, Missouri and Tennessee have five-employee minimums. *Id.*

<sup>8</sup> North Carolina Workers' Compensation Law (hereinafter N. C. Act), § 97-13(b).

other workers.<sup>9</sup> Another fourteen exclude all farmers from mandatory coverage, although they allow agricultural employers to obtain coverage voluntarily.<sup>10</sup> North Carolina is in a group of twenty-five states that cover agricultural workers in varying degrees but not to the extent of workers generally.<sup>11</sup>

**Occupational disease:** Another set of gaps arose from the way that the compensable event was defined. The triggering event for compensability was typically something like "accidental injury arising out of and in the course of employment," and the concept of "accident" usually required some kind of out-of-the-ordinary precipitating event. Early on, this requirement barred pretty much any kind of recovery for occupational disease. Workers who had contracted such occupational diseases as silicosis, byssinosis, or who had developed radiation injury from workplace exposure simply had no remedy. It took thirty years for the states to come up with anything like adequate coverage of occupational disease. Today in North Carolina occupational disease is compensated for under a separate provision.<sup>12</sup> Certain listed diseases are expressly covered,<sup>13</sup> and additional unspecified diseases may qualify as occupational when they can be shown to be due to causes and conditions characteristic of and peculiar to a particular occupation.<sup>14</sup> Ordinary diseases of life are excluded when they are diseases to which the general public

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<sup>9</sup> U. S. Department of Labor, "State Workers' Compensation Laws", January 1995, Table 3.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* However, no other of these jurisdictions appears to have a minimum as high as North Carolina's minimum of ten.

<sup>12</sup> N.C. Act, § 97-52.

<sup>13</sup> N.C. Act, § 97-53.

<sup>14</sup> § 97-53 (13).

is equally exposed.<sup>15</sup> There continue, however, to be difficult issues of proof in cases where the disease in question is not one uniquely caused by workplace exposure.

**Stress cases and the like:** One of the major trends nationwide is the increase in compensation claims for stress or other injuries which may be termed "mental-mental"; that is, a mental cause producing a mental injury. The extension of coverage into these areas has generated major controversy. On the one hand, modern life is producing new kinds of injuries: stress in the workplace is not imaginary, and it can produce real injury and disability. On the other, employers see our society as becoming more litigious and fear that claims will be brought for, say, nothing more than a supervisor's legitimate criticism of his or her subordinate. Most states allow some form of compensation for "mental-mental" injuries.

In North Carolina, there have not been very many stress cases. Here, if the claim is "accidental injury," the claimant bucks up against the requirement of an unusual causal event, which may simply not exist. The alternative is to claim occupational disease, in which case it must be shown that whatever the mental disease in question is (such as depression) is more prevalent in the particular occupation than it is in the public at large.

**Repeated impacts; causal events which are not unusual:** The concept of "accidental injury" can also presents obstacles when there have been repeated impacts and it is not clear which one or ones caused the injury. The obstacle is particularly evident when the impacts are not unusual occurrences but are rather events that occur normally as a part of the work. So you can have an injury which clearly was caused by the employment, but

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<sup>15</sup> *Id.*

which goes uncompensated because there is no unusual occurrence which qualifies as an "accident."

In the late 1980's North Carolina relaxed this traditional definition of "accident" for back injuries and hernias. For those kinds of injuries it is sufficient if it is a direct result of a "specific traumatic incident" of the work assigned;<sup>16</sup> in other words, the incident need not be unusual. For other types of injuries, e.g. a knee injury, the unusualness requirement is retained.

Most states no longer have the restrictive concept of "accident" employed by North Carolina. A number of states continue to use the term "accident" or "accidental" but use it to refer to the *injury*, not the causing event; others have simply dropped the terminology completely.<sup>17</sup> Montana, North Dakota, Florida, Louisiana and Virginia continue to employ a definition not unlike North Carolina's.<sup>18</sup>

**Testing the limits of exclusivity:** Yet another source of controversy has been what I will call the continual testing of the boundaries of workers' compensation exclusivity. For example, workers' compensation normally does not cover injury intentionally inflicted by the employer, the theory being that there has been no accident. Courts in some states, unable to stomach some of the most egregious employer abuses, have stretched the concept of "intentional" to include gross negligence that is "substantially certain" to cause death or serious injury, thereby moving the employer action outside the

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<sup>16</sup> N. C. Act, § 97-2 (6) and (18).

<sup>17</sup> See generally Larson, *Workmen's Compensation* (11 vols. Matthew Bender & Co.) (hereinafter "Larson"), §§ 37.20 and 38.10.

<sup>18</sup> *Id.*, § 38.23.

compensation system and leaving the employer vulnerable to tort suit. *Woodson*<sup>19</sup> is North Carolina's prime example of such a court decision.

There are other areas where the boundaries of the exclusivity principle are being tested. Consider, for example, a woman who is subjected to sexual harassment by her supervisor, resulting in her nervous breakdown and hospitalization for anxiety and depression. Is this an employment discrimination case, or is it a workers' compensation case? Certainly she has suffered mental injury due to her employment. These cases really are coming up around the country.<sup>20</sup> Interestingly, it is the employers and the insurance companies who are arguing that the workers' compensation system applies in this kind of situation: exclusivity would then bar the complainant's large-dollar-amount tort suits for intentional infliction of emotional distress and the like.

**Actions against a third party:** Suppose one is injured in the course of employment because of a defective machine. Can the employee bring a product liability tort suit against the manufacturer, or is he or she barred by workers' compensation exclusivity? Must the employee elect between workers' compensation and tort recovery? If there is a tort recovery, can the employer get back the workers' compensation that has been paid out? Can both the employer who has paid compensation and the employee sue the third party? Can one settle the product liability suit without the consent of the other? These are complicated questions which have been answered differently in

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<sup>19</sup> *Woodson v. Rowland*, 329 N.C. 330, 407 S.E.2d 222 (1991).

<sup>20</sup> See Larson, § 68.34(d).

different states.<sup>21</sup>

**Second Injury Fund:** Suppose an employer hires a person who has already lost an eye. If an accident occurs in which he or she loses the other eye, this worker becomes totally disabled even though, in a normal person, the degree of disability produced by the loss of one eye would have been comparatively small. Under traditional principles, one of two things happens: either the worker goes greatly undercompensated, or the employer is on the hook for a much larger compensation bill than it would be in the case of a more typical worker. Historically, this caused employers to refuse to hire already partially disabled workers, and even to terminate thousands of one-eyed, one-armed, and one-legged workers. The solution to this dilemma is the "second injury fund" which is maintained by the state and from which the employer is reimbursed for compensation costs beyond those which it would have incurred had the worker not had the prior disability. This way, the worker receives full compensation but the employer is not billed for the portion of the disability for which it is not responsible.

North Carolina has a second injury fund<sup>22</sup> which is quite restrictive in its application compared to the funds of most other states.<sup>23</sup> As a result, in the great majority of hiring and employment situations involving workers with a prior disability, the purposes of the fund are not being accomplished.

**Interplay with other legislation:** Another whole set of issues springs from recent federal legislation such as the Americans With Disabilities Act (ADA) and the Family and Medical

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<sup>21</sup> See generally Larson, § 71.00 et seq.

<sup>22</sup> N.C. Act, § 97-40.1

<sup>23</sup> See generally Larson, § 59.30 et seq.

Leave Act. While their purposes are different, they also can apply to injured or disabled workers. Problems of coordinating these Acts with workers' compensation will continue to require considerable attention. For example, in states with second injury funds, the employee may not get the benefit of the fund unless he or she discloses the pre-existing disability to the employer; in contrast, the ADA severely restricts the ability of the employer to make pre-employment inquiries as to medical condition.

**Length and complexity of claims processing:** A major trend that should not be overlooked is the increase in the length and complexity of processing contested claims. The administrative proceedings have become more litigious and formal, and lawyers are more frequently involved. This is a nationwide phenomenon and is not unique to North Carolina. Anecdotal information would indicate that here in North Carolina in the Seventies the time from hearing request to disposition process was an average of perhaps 120 to 180 days. By 1986, according to Commission data, the average had risen to 337 days, and by 1991-92 the average time from hearing request to disposition was up to 430 days.<sup>24</sup> More recent numbers haven't yet been calculated, but apparently when they are they would show even longer times.

From the court system, here are median times for Superior Court cases in a sampling of counties decided between July 1, 1994 and June 30, 1995:<sup>25</sup>

Wake	341 days
Vance	323 days

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<sup>24</sup> Data supplied by N.C. Industrial Commission.

<sup>25</sup> North Carolina Administrative Office of the Courts, "Summary of July 1, 1994 -- June 30, 1995 North Carolina Trial Court Caseload."

New Hanover	297 days
Mecklenburg	256 days
Jones	244 days
Gaston	167.5 days

These numbers as I understand it include dispositions prior to trial including settlement, so they are probably not directly comparable to the Industrial Commission data given above. Nevertheless, the numbers are such that it is unlikely that a more precise comparison will eliminate our concern.

**Mediation:** In an effort to reduce backlogs and streamline their workers' compensation claims processing, an increasing number of states have turned to mediation and other forms of alternative dispute resolution. In 1994 North Carolina joined this group, incorporating mediation as a formal stage in its contested hearing procedures. The program is, I understand, widely regarded as successful, having resulted in settlement of a healthy majority of cases mediated.<sup>26</sup> However, due as I understand it mainly to staffing limitations, only a fairly small percent (I believe in the range of 10 to 20 percent) of the Commission's contested cases are currently being ordered to mediation.

**Conclusion:** My effort today has been to provide background as well as give a flavor of the kinds of issues that are occupying the attention of the courts and legislatures today. I'll be happy to try to answer any questions you may have.

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<sup>26</sup> For example, in the first six months of operation of the Commission's program, 109 mediations were ordered but not dispensed with; of those, 42 settled before mediation, 42 settled in mediation, and 25 were not settled. See Lex K. Larson, "Mediation of Industrial Commission Cases," 17 Campbell Law Review 395, 397 (Spring 1995).

## WORKERS COMPENSATION TAXES

Under North Carolina law, insurance companies are subject to the premiums tax, rather than the corporate income tax. The premiums tax is imposed as a percentage of gross premium payments due to an insurance company on policies issued in North Carolina.

Different types of policies are taxed at different rates. The general tax rate is 1.9 percent. The tax rate on policies issued for workers compensation policies is 2.5 percent.

For companies that self-insure their workers, and for companies that are part of a self-insurance pool, the 2.5 percent tax is charged based on what the equivalent premiums would have been for the amount of coverage provided.

Premiums taxes are General Fund revenues and are available for appropriation by the General Assembly on any lawful object of expenditure. For tax year 1994, the following amounts were collected in premiums tax on worker's compensation insurance:

Insurance Policies	\$15,353,505
Self-Insurers	\$13,861,797
Total	<u>\$29,215,302</u>

# INDUSTRIAL COMMISSION

Budget Data	1992-93 Actual	1993-94 Actual	1994-95 Actual	1995-96 Estimated
Expenditures	5,015,831	5,975,470	9,255,203	9,027,958 *
Receipts	(1,096,223)	(1,604,248)	(2,131,325)	(3,079,763)*
<i>General Fund Appropriations</i>	3,919,608	4,371,222	7,123,878	5,948,195
Positions	106.00	106.00	130.00	138.00

\* Estimated expenditures and receipts for FY 1995-96 reflect prior year encumbrances of \$1.72 million.

## Legislative Budget Actions

### 1995 Session

	FY 1995-96	FY 1996-97
1. Reduce Supplies and Equipment	(\$16,792) R	(\$16,792) R
2. Industrial Commission Automation -- To begin second phase installation of the Commission's electronic document storage and retrieval system.	\$500,000 NR	
3. Fraud Investigations -- Fund operating support for 2 positions to investigate fraudulent workers' comp claims.	\$100,000 R	\$100,000 R
4. Additional Staff Support -- Fund operating support to add 4 legal secretaries and 2 claims examiners.	\$167,041 R	\$167,041 R

## North Carolina Industrial Commission

### Statistical Data

- Number of claims of contested cases resulting in hearings increased from 6219 claims in 1993-94 to 7453 claims in 1994-94—an increase of 20%.
- Number of injuries on the job increased from 153,842 in 1993-94 to 167,518 in 1994-95 — an increase of 9%.
- The average number of days from hearing request to issuance of an Opinion and Award decreased from 386 days in 1993-94 to 273 days in 1994-95 — a decrease of 29%.
- Number of Workers' Compensation claims filed 1994-95: 94,053 claims
- Current back log of cases at the Deputy Commissioner level (first level of hearing): 4244 cases

## **NEEDS OF THE NORTH CAROLINA INDUSTRIAL COMMISSION:**

### **I. ADMINISTRATIVE**

- **Mediation** - much more efficient than protracted hearing proceedings. Additional personnel needed.
- **Computer program completion** - \$1.3 million was deferred from last session - includes two programmers and one help desk person in addition to equipment and software necessary to complete Commission's electronic document management system.
- **Statistical System Improvement** - Improvement is needed for management purposes and to better track the overall status of the workers' compensation program.
- **Commissioner and Deputy Commissioner Salaries** - Need to be brought into line with other states and in line with like responsibilities within North Carolina.
- **Receipts-Supported Agency** - Funds from premium tax, the tax paid by self-insureds and hearing costs should be dedicated to the Commission rather than the General Fund.
- **Office of the Executive Secretary** - Much of the work of this office involves hearings to determine if benefits should cease (Form 24 hearings) and review of settlement agreements. Additional personnel needed to keep these functions on a current basis.

### **II. PROGRAMMATIC**

- **Second injury fund** - Is it still needed? Should it be changed? - The Americans with Disabilities Act has raised questions as to whether the Second Injury Fund is still needed. The States are divided on this issue and the Legislative Study Commission may want to examine the pros and cons of this debate.

## **North Carolina Industrial Commission**

My name is J. Howard Bunn, Jr., and I am Chairman of the North Carolina Industrial Commission. My presentation today is based on administrative needs identified by the Industrial Commission and by the Industrial Commission's Advisory Council as top priorities. Other items for your consideration will be submitted in due course. Members of the Advisory Council are identified in an appendix to this presentation.

### **Accomplishments:**

I took office a little over two years ago, and have seen the following occur during my tenure:

- Elimination of backlog of 900 cases on appeal to the Full Commission by forming 2 extra appeals panels composed of former Commissioners and former Deputy Commissioners and funded from the Contingency and Emergency Fund.
- Recognition of gross underfunding and understaffing of the Commission and receipt of General Assembly approval to
  - (a) expand the Commission from 3 to 7 members, allowing 2 panels of Commissioners to sit simultaneously, thus expediting the appeals process and preventing appeals backlogs from recurring;
  - (b) add 4 Deputy Commissioners to facilitate increased hearings of contested cases.
- Request and receipt of funding from the General Assembly to develop an "Information Strategic Plan", implementation of which has resulted in
  - (a) the Commission moving from using "dumb" terminals on the state mainframe to the installation of 137 personal computers tied together with

a Local Area Network and tied to the State Computer Center with a Wide Area Network.

(b) installation of an Electronic Document Management System (presently being engineered and installed) that will result in the millions of paper documents received by the Commission being scanned, converted to electronic image files, condensed, and stored on permanent 12" laser disks.

(c) planning for the full integration of the new networks with the Commission's eleven (11) legacy databases on the state mainframe (yet to be funded).

- Implementation of a Mediation Program, approved by the 1993 General Assembly, currently staffed by one employee with part-time clerical help. Mediation now handles 125 cases per month with two-thirds being settled, providing claimants with faster resolution of cases and avoiding scheduling of hearings and freeing contested case dockets.
- Creation of an Ombudsperson Program, providing information and assistance to the general public on workers' compensation - four (4) Ombudspersons now receive a total of 200 calls per day; a toll free line (1-800-688-8349) has been installed to make the program more accessible to the public.
- Organization of a group, which I chaired, and composed of business, labor, and insurer interests that developed a rewrite of the Workers' Compensation Act, which was passed into law without opposition in 1994 in Senate Bill 906.
- Creation of an Advisory Council, composed of representatives of all segments involved with workers' compensation issues, allowing the Commission to hear concerns, discuss issues and seek solutions to problems at the earliest possible time.
- Won legislative approval during the 1995 General Assembly Session for the creation of a Fraud Investigation Unit to investigate workers' compensation fraud, estimated to be as much as \$60 million annually.

- Won approval from the 1995 General Assembly for additional claims and legal support staff to help expedite handling of the 95,000 workers' compensation claims filed annually.
- Acquisition of expanded office space for the Industrial Commission to better organize the workflow and to provide adequate space for all sections of the agency.
- Revision (downward) of the workers' compensation medical fee schedule and development of new rules and regulations for rehabilitation, managed care, and utilization review.
- Completion, last year, by more than 13,000 workers of the Industrial Commission Safety Division's accident prevention course, designed to help reduce the number of work-related injuries and disabilities.

**Needs:**

To continue the progress we have made at the Industrial Commission, the following need to be considered:

- **Mediation - much more efficient than protracted hearing proceedings. Additional personnel needed.**

Currently our mediation program is staffed by an Agency Legal Specialist who serves as Mediation Coordinator and is assisted by a part-time clerical person. Approximately 125 cases are sent through mediation each month, with a two-thirds settlement rate. Due to the large number of cases which may benefit from mediation and thus cut down on the need for, and costs associated with, formal hearings, this program is in need of expansion to enable it to reach as many cases as possible.

- **Computer program completion - \$1.3 million was deferred from last session - includes two programmers and one help desk person in addition to equipment and software necessary to complete Commission's electronic document management system.**

The Industrial Commission has begun its expansion into the modern technological age with the installation of 137 personal computers tied together with a Local Area Network and tied to the State Computer with a Wide Area Network. It is currently installing an Electronic Document Management System that will result in millions of paper documents received by the Commission being scanned, converted to electronic image files, condensed, and stored on permanent 12" laser disks. Another \$1.3 million is needed to complete the business applications and computerization the Commission has already begun. Computer training for the staff in order to use efficiently the new system must also be factored into the picture.

- **Statistical System Improvement - Improvement is needed for management purposes and to better track the overall status of the workers compensation program.**

A recent series of articles by The Charlotte Observer concerning the Workers' Compensation system abundantly pointed out the antiquated nature of the Commission's statistical system. In order to better understand and monitor vital trends and activities in North Carolina's Workers' Compensation, so that the Commission may be able to react more rapidly and competently to what is actually happening within the system, we need to focus on developing a better system of keeping and retrieving statistics.

- **Commissioner and Deputy Commissioner Salaries - Need to be brought into line with other states and in line with like responsibilities within North Carolina.**

In order to attract and retain qualified and highly competent people to fill these positions, we need to look at the salaries currently being paid in comparison to other similar positions within North Carolina State Government as well as similar positions in other states, for example Virginia. A number of recent Deputy Commissioner vacancies have been at least in part due to salary concerns.

- **Receipts-Supported Agency - Funds from premium tax, the tax paid by self-insureds and hearing costs should be dedicated to the Commission rather than the General Fund.**

This would enable the Commission to use funds from workers' compensation premium taxes and self insured taxes to fund the Industrial Commission. Currently premium taxes from workers' compensation generate approximately \$33 million a year. The Commission's current budgeted expenditures for Fiscal Year 95-96 is \$9,027,958. Realistically, in order to efficiently and properly carry out the functions required by law to be handled by the Commission, receipts supported funding is a suitable way to assure the Commission's needs are met on a timely basis.

- **Office of the Executive Secretary - Much of the work of this office involves hearings to determine if benefits should cease (Form 24 hearings) and review of settlement agreements. Additional personnel needed to keep these functions on a current basis.**

Several key positions in this vital office are now being staffed by temporary employees and are just above survival level, with most staff members regularly working many hours of overtime every week in order to keep current on Form 24 hearings (which come with time limits by law) and the approval of settlement agreements.

**THANK YOU FOR YOUR CONSIDERATION OF THE FOREGOING. I  
LOOK FORWARD TO WORKING WITH YOU.**

**North Carolina Industrial Commission  
Advisory Council**

- 1. R. James Lore, Lore & McClearen, Attorneys, P. O. Box 6513, Raleigh, North Carolina 27628; Telephone (919)-833-4509; Fax (919) 829-9073.**
- 2. Henry N. Patterson, Jr., Patterson, Harkavy & Lawrence, Attorneys, P. O. Box 27927, Raleigh, North Carolina 27611; Telephone (919) 755-1812; Fax (919) 755-0124.**
- 3. Christopher Scott, President, North Carolina State AFL-CIO, 1408 Hillsborough Street, P. O. Box 10805, Raleigh, North Carolina 27605; Telephone (919) 833-6678; Fax (919) 832-2021.**
- 4. Robin E. Hudson, Attorney, P. O. Box 6374, Raleigh, North Carolina 27628-6374; Telephone (919) 821-1480; Fax (919) 821-1320.**
- 5. Lex Larson, President, Employment Law Research, Incorporated, P. O. Box 1551, Durham, North Carolina 27702; Telephone (919) 683-1142; Fax (919) 683-1142.**
- 6. William H. Stephenson, Stephenson Consultants, P. O. Box 353, Garner, North Carolina 27529; Telephone (919) 779-4717; Fax (919) 779-4717.**
- 7. John B. McMillan, Manning, Fulton & Skinner, Attorneys, P. O. Box 20389, Raleigh, North Carolina 27619-0389, Telephone (919) 787- 8880; Fax (919) 787- 8902.**
- 8. J. Ruffin Bailey, Bailey & Dixon, Attorneys, P. O. Box 1351, Raleigh, North Carolina 27602-1351; Telephone (919) 828-0731; Fax (919) 828-6592.**
- 9. Alan J. Miles, Bailey & Dixon, Attorneys, P. O. Box 1351, Raleigh, North Carolina 27602-1351; Telephone (919) 828-0731; Fax (919) 828-6592.**
- 10. Leslie S. Haydel, Brooks, Stevens & Pope, Attorneys, 2000 Regency Parkway, Suite 150, Cary, North Carolina 27511; Telephone (919) 481-9103, Fax (919) 481-9137. ) Send to Susan Hunt (instead of Leslie S. Haydel) until further notice.**
- 11. James A. Nunley, M.D., Duke University Medical Center, Box 2919, Durham, North Carolina 27710; Telephone (919) 684-4033; Fax (919) 681-8197.**

# North Carolina Industrial Commission

## Personnel Request by Program Area

### Computer Support/Data Processing

<u>Position</u>	<u>Grade</u>	<u>Salary</u>	<u>#</u>	<u>\$ R</u>	<u>\$ NR</u>	<u>Total \$</u>
Applications Programmer II	72	\$31,235	2	\$77,488	\$7,000	\$84,488
Computer Support Technician II	63	\$21,478	1	\$27,183	\$3,500	\$30,683

### Office of the Executive Secretary

<u>Position</u>	<u>Grade</u>	<u>Salary</u>	<u>#</u>	<u>\$ R</u>	<u>\$ NR</u>	<u>Total \$</u>
Agency Legal Specialist I	73	\$32,586	5*	\$201,722	\$17,500	\$219,222
Records Clerk III	57	\$16,954	1**	\$21,823	\$3,500	\$25,323
Administrative Assistant	65	\$23,250	1	\$29,283	\$3,500	\$32,783

\* Two of these positions are currently handled by temporary employees, funding for which expires June 30, 1996

\*\* This position is currently handled by an employee on loan from another section in the Commission

### Deputy Commissioners

<u>Position</u>	<u>Grade</u>	<u>Salary</u>	<u>#</u>	<u>\$ R</u>	<u>\$ NR</u>	<u>Total \$</u>
Agency Legal Specialist I	73	\$32,586	2*	\$80,688	\$7,000	\$87,688
Administrative Assistant	65	\$23,250	1	\$29,283	\$3,500	\$32,783

\* This position is currently handled by a temporary employee, funding for which expires June 30, 1996

### Mediation Program

<u>Position</u>	<u>Grade</u>	<u>Salary</u>	<u>#</u>	<u>\$ R</u>	<u>\$ NR</u>	<u>Total \$</u>
Agency Legal Specialist I	73	\$32,586	1	\$40,344	\$3,500	\$43,844
Office Assistant IV	59	\$18,305	1*	\$23,423	\$3,500	\$26,923
Deputy Commissioner	83	\$51,366	1	\$62,595	\$3,500	\$66,095

\* This position is currently handled by a temporary employee, funding for which expires June 30, 1996

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**Claims**

<u>Position</u>	<u>Grade</u>	<u>Salary</u>	<u>#</u>	<u>\$ R</u>	<u>\$ NR</u>	<u>Total \$</u>
Agency Legal Specialist I	73	\$32,586	1	\$40,344	\$3,500	\$43,844
Claims Examiner V	61	\$19,840	3	\$75,810	\$10,500	\$86,310

**Commissioners**

<u>Position</u>	<u>Grade</u>	<u>Salary</u>	<u>#</u>	<u>\$ R</u>	<u>\$ NR</u>	<u>Total \$</u>
Administrative Secretary V	61	\$19,840	4	\$100,960	\$14,000	\$114,960

**Office of the Administrator**

<u>Position</u>	<u>Grade</u>	<u>Salary</u>	<u>#</u>	<u>\$ R</u>	<u>\$ NR</u>	<u>Total \$</u>
Administrative Assistant	65	\$23,250	1	\$29,283	\$3,500	\$32,783

**Workers' Compensation Nurses**

<u>Position</u>	<u>Grade</u>	<u>Salary</u>	<u>#</u>	<u>\$ R</u>	<u>\$ NR</u>	<u>Total \$</u>
Workers' Compensation Nurse	69	\$27,485	2	\$68,602	\$7,000	\$75,602

**Ombudsman Program**

<u>Position</u>	<u>Grade</u>	<u>Salary</u>	<u>#</u>	<u>\$ R</u>	<u>\$ NR</u>	<u>Total \$</u>
Administrative Officer II (Ombudsperson)	70	\$28,731	3	\$107,412	\$10,500	\$117,912

**Safety Education Program**

<u>Position</u>	<u>Grade</u>	<u>Salary</u>	<u>#</u>	<u>\$ R</u>	<u>\$ NR</u>	<u>Total \$</u>
Industrial Safety Rep II	66	\$24,232	2	\$60,892	\$7,000	\$67,892

**Office of the Chairman of the Commission**

<u>Position</u>	<u>Grade</u>	<u>Salary</u>	<u>#</u>	<u>\$ R</u>	<u>\$ NR</u>	<u>Total \$</u>
Agency General Counsel I	80	\$44,782	1	\$54,794	\$3,500	\$58,294
Administrative Assistant	65	\$23,250	1	\$29,283	\$3,500	\$32,783

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**Docket Section**

<b><u>Position</u></b>	<b><u>Grade</u></b>	<b><u>Salary</u></b>	<b><u>#</u></b>	<b><u>\$ R</u></b>	<b><u>\$ NR</u></b>	<b><u>Total \$</u></b>
Records Clerk IV	59	\$18,305	2	\$46,848	\$7,000	\$53,846

**Commission Receptionist**

<b><u>Position</u></b>	<b><u>Grade</u></b>	<b><u>Salary</u></b>	<b><u>#</u></b>	<b><u>\$ R</u></b>	<b><u>\$ NR</u></b>	<b><u>Total \$</u></b>
Receptionist III	57	\$16,954	1	\$21,823	\$3,500	\$25,323

**Files/Records**

<b><u>Position</u></b>	<b><u>Grade</u></b>	<b><u>Salary</u></b>	<b><u>#</u></b>	<b><u>\$ R</u></b>	<b><u>\$ NR</u></b>	<b><u>Total \$</u></b>
File Clerk III	57	\$16,954	1	\$21,823	\$3,500	\$25,323

(k) Unfair Trade Practices. -- A violation of this section is considered an unfair trade practice under Article 63 of this Chapter.

Sec. 32. G.S. 58-60-35 reads as rewritten:

"§ 58-60-35. Disclosure of prearrangement insurance policy provisions.

(a) As used in this section:

- (1) 'Prearrangement' means any contract, agreement, or mutual understanding, or any series or combination of contracts, agreements or mutual understandings, whether funded by trust deposits or prearrangement insurance policies, or any combination thereof, which has for a purpose the furnishing or performance of specific funeral services, or the furnishing or delivery of specific personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, mausoleum, grave marker or monument.
- (2) 'Prearrangement insurance policy' means a life insurance policy, annuity contract, or other insurance contract, or any series of contracts or agreements in any form or manner, issued on a group or individual basis by an insurance company authorized by law to do business in this State, which, whether by assignment or otherwise, has for ~~a~~ its sole purpose the funding of a specific preneed funeral contract or a specific insurance-funded funeral or burial prearrangement, the insured being the person for whose service the funds were paid.

(b) The following information shall be adequately disclosed by the insurance agent or limited representative at the time an application is made, prior to accepting the applicant's initial premium, for a prearrangement insurance policy:

- (1) The fact that a prearrangement insurance policy is involved or being used to fund a prearrangement;
- (2) The nature of the relationship among the insurance agent or agents, limited representative, the provider of the funeral or cemetery merchandise or services, the administrator, and any other person;
- (3) The relationship of the prearrangement insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement;
- (4) The effect on the prearrangement of (i) any changes in the prearrangement insurance policy, including but not limited to, changes in the assignment, beneficiary designation, or use of the policy proceeds; (ii) any penalties to be incurred by the insured as a result of failure to make premium payments; and (iii) any penalties to be incurred or monies to be received as a result of cancellation or surrender of the prearrangement insurance policy;
- (5) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the policy proceeds and the amount actually needed to fund the prearrangement; and
- (6) Any penalties or restrictions, including geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services, or the prearrangement guarantee."

Sec. 33. G.S. 58-81-1 is repealed.

Sec. 33.1. G.S. 20-109.1(a), as rewritten by Chapter 50 of the Session Laws of 1995, reads as rewritten:

"(a) Option to Keep Title. -- When a vehicle is damaged to the extent that it becomes a salvage vehicle and the owner submits a claim for the damages to the ~~insurer of the vehicle, an insurer,~~ the insurer must determine whether the owner wants to keep the vehicle after payment of the claim. If the owner does not want to keep the vehicle after payment of the claim, the procedures in subsection (b) of this section apply. If the owner wants to keep the vehicle after payment of the claim, the procedures in subsection (c) of this section apply."

Sec. 34. G.S. 95-111.12(a) reads as rewritten:

"(a) No owner shall operate a device subject to the provisions of this Article, unless at the time, there is in existence a contract of insurance providing coverage of not less than one million dollars (\$1,000,000) per occurrence against liability for injury to persons or property arising out of the operation or use of such device or there is in existence a contract of insurance providing coverage of not less than five hundred thousand dollars (\$500,000) per occurrence against liability for injury to persons or property arising out of the operation or use of the amusement devices if the annual gross volume of the devices does not exceed two hundred seventy-five thousand dollars (\$275,000); provided waterslides shall not be required to be insured as ~~herein provided in this subsection~~ for an amount in excess of one hundred thousand dollars (\$100,000) per occurrence. The insurance contract to be provided must be by any insurer or surety that is acceptable to the North Carolina Insurance Commissioner and authorized to transact business in this State; provided, however, that insurance for waterslides may be purchased under Article 21 of Chapter 58 of the General Statutes or under G.S. 58-28-5(b).

In lieu of a contract for insurance or surety, a waterslide owner may alternately comply with this subsection by furnishing to the Commissioner satisfactory proof of financial ability to directly pay one hundred thousand dollars (\$100,000) per occurrence in liability for injury to persons or property arising out of the operation or use of the waterslide. The Commissioner may require the deposit of a security, indemnity, bond, or irrevocable letter of credit to secure the payment of any liability incurred. The Commissioner may consult with the Commissioner of Insurance, the Commissioner of Banks, the Secretary of Commerce, or the State Treasurer in order to determine if any security, indemnity, bond, or irrevocable letter of credit filed under this subsection is acceptable proof of financial responsibility."

Sec. 35. G.S. 97-2(2) reads as rewritten:

"(2) Employee. -- The term 'employee' means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession or occupation of his employer, and as relating to those so employed by the State, the term 'employee' shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term 'employee' shall include all officers and employees thereof, including such as are elected by the people. The term 'employee' shall include members of the North Carolina national guard, except when called into the service of the United States, and members of the North Carolina

State guard, and members of these organizations shall be entitled to compensation for injuries arising out of and in the course of the performance of their duties at drill, in camp, or on special duty under orders of the Governor. The term 'employee' shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment, and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee as herein defined of a municipality, county, or of the State of North Carolina while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of his employer.

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation specifically excluding such executive officer in such contract of insurance and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

All county agricultural extension service employees who do not receive official federal appointments as employees of the United States Department of Agriculture and who are field faculty members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University and the boards of county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board of commissioners in the county in which the employee is employed for purposes of workers' compensation.

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The term employee shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-491(a) when performing duties in the course and scope of a State approved mission pursuant to Article 11 of Chapter 143B.

Employee shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

Any sole proprietor or partner of a business or any member of a limited liability company whose employees are eligible for benefits under this Article may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article."

Sec. 36. G.S. 97-19 reads as rewritten:

"§ 97-19. Liability of principal contractors; certificate that subcontractor has complied with law; right to recover compensation of those who would have been liable; order of liability.

Any principal contractor, intermediate contractor, or subcontractor who shall sublet any contract for the performance of any work without requiring from such subcontractor or obtaining from the Industrial Commission a certificate, issued by a workers' compensation insurance carrier, or a certificate of compliance issued by the Department of Insurance to a self-insured subcontractor, stating that such subcontractor has complied with G.S. 97-93 hereof, shall be liable, irrespective of whether such subcontractor has regularly in service fewer than three employees in the same business within this State, to the same extent as such subcontractor would be if he were subject to the provisions of this Article for the payment of compensation and other benefits under this Article on account of the injury or death of any such subcontractor, any principal or partner of such subcontractor or any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract. If the principal contractor, intermediate contractor or subcontractor shall obtain such certificate at the time of subletting such contract to subcontractor, he shall not thereafter be held liable to any such subcontractor, any principal or partner of such subcontractor, or any employee of such subcontractor for compensation or other benefits under this Article. ~~If the subcontractor has no employees and waives in writing his right to coverage under this section, the principal contractor, intermediate contractor, or subcontractor subletting the contract shall not thereafter be held liable for compensation or other benefits under this Article to said subcontractor. Subcontractors who have no employees are not required to comply with G.S. 97-93.~~

Any principal contractor, intermediate contractor, or subcontractor paying compensation or other benefits under this Article, under the foregoing provisions of this section, may recover the amount so paid from any person, persons, or corporation who independently of such provision, would have been liable for the payment thereof.

Every claim filed with the Industrial Commission under this section shall be instituted against all parties liable for payment, and said Commission, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

The principal or owner may insure any or all of his contractors and their employees in a blanket policy, and when so insured such contractor's employees will be entitled to compensation benefits regardless of whether the relationship of employer and employee exists between the principal and the contractor."

Session - 1989

H.B. 1202

CHAPTER 637

AN ACT TO PROVIDE THAT CONTRACTORS ARE NOT REQUIRED TO PROVIDE WORKERS' COMPENSATION BENEFITS FOR SUBCONTRACTORS WHO HAVE NO EMPLOYEES; AND TO EXEMPT SUBCONTRACTORS WHO HAVE NO EMPLOYEES FROM THE REQUIREMENT OF COMPLIANCE WITH G.S. 97-93.

*The General Assembly of North Carolina enacts:*

**Section 1.** G.S. 97-19 reads as rewritten:

*" § 97-19. Liability of principal contractors; certificate that subcontractor has complied with law; right to recover compensation of those who would have been liable; order of liability.*

Any principal contractor, intermediate contractor, or subcontractor who shall sublet any contract for the performance of any work without requiring from such subcontractor or obtaining from the Industrial Commission a certificate, issued by the Industrial Commission, stating that such subcontractor has complied with G.S. 97-93 hereof, shall be liable, irrespective of whether such subcontractor has regularly in service less than four employees in the same business within this State, to the same extent as such subcontractor would be if he were subject to the provisions of this Article for the payment of compensation and other benefits under this Article on account of the injury or death of any such subcontractor, any principal or partner of such subcontractor or any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract. If the principal contractor, intermediate contractor or subcontractor shall obtain such certificate at the time of subletting such contract to subcontractor, he shall not thereafter be held liable to any such subcontractor, any principal or partner of such subcontractor, or any employee of such subcontractor for compensation or other benefits under this Article. If the subcontractor has no employees and waives in writing his right to coverage under this section, the principal contractor, intermediate contractor, or subcontractor subletting the contract shall not thereafter be held liable for compensation or other benefits under this Article to said subcontractor. Subcontractors who have no employees are not required to comply with G.S. 97-93. The Industrial Commission, upon demand shall furnish such certificate, and may charge therefor the cost thereof, not to exceed twenty-five cents (25¢).

Any principal contractor, intermediate contractor, or subcontractor paying compensation or other benefits under this Article, under the foregoing provisions of this section, may recover the amount so paid from any person, persons, or corporation who independently of such provision, would have been liable for the payment thereof.

Every claim filed with the Industrial Commission under this section shall be instituted against all parties liable for payment, and said Commission, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

The principal or owner may insure any or all of his contractors and their employees in a blanket policy, and when so insured such contractor's employees will be entitled to compensation benefits regardless of whether the relationship of employer and employee exists between the principal and the contractor."

**Sec. 2.** This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1989.

employed by the same employer, federal government employees in North Carolina, and domestic servants, nor to employees of such persons, nor to any person, firm or private corporation that has regularly in service less than ~~four~~ three employees in the same business within this State, except that any employer without regard to number of employees, including an employer of domestic servants, farm laborers, or one who previously had exempted himself, who has purchased workers' compensation insurance to cover his compensation liability shall be conclusively presumed during life of the policy to have accepted the provisions of this Article from the effective date of said policy and his employees shall be so bound unless waived as provided in this Article; provided however, that this Article shall apply to all employers of one or more employees who are employed in activities which involve the use or presence of radiation."

Sec. 4. G.S. 97-19 reads as rewritten:

"§ 97-19. *Liability of principal contractors; certificate that subcontractor has complied with law; right to recover compensation of those who would have been liable; order of liability.*--Any principal contractor, intermediate contractor, or subcontractor who shall sublet any contract for the performance of any work without requiring from such subcontractor or obtaining from the Industrial Commission a certificate, issued by the Industrial Commission, stating that such subcontractor has complied with G.S. 97-93 hereof, shall be liable, irrespective of whether such subcontractor has regularly in service less than four employees in the same business within this State, to the same extent as such subcontractor would be if he were subject to the provisions of this Article for the payment of compensation and other benefits under this Article on account of the injury or death of any such subcontractor, any principal or partner of such subcontractor or any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract. If the principal contractor, intermediate contractor or subcontractor shall obtain such certificate at the time of subletting such contract to subcontractor, he shall not thereafter be held liable to any such subcontractor, any principal or partner of such subcontractor, or any employee of such subcontractor for compensation or other benefits under this Article. The Industrial Commission, upon demand shall furnish such certificate, and may charge therefor the cost thereof, not to exceed twenty-five cents (25¢).

Any principal contractor, intermediate contractor, or subcontractor paying compensation or other benefits under this Article, under the foregoing provisions of this section, may recover the amount so paid from any person, persons, or corporation who independently of such

provision, would have been liable for the payment thereof.

Every claim filed with the Industrial Commission under this section shall be instituted against all parties liable for payment, and said Commission, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

The principal or owner may insure any or all of his contractors and their employees in a blanket policy, and when so insured such contractor's employees will be entitled to compensation benefits regardless of whether the relationship of employer and employee exists between the principal and the contractor."

Sec. 5. G.S. 97-28 reads as rewritten:

"§ 97-28. *Seven-day waiting period; exceptions.*--No compensation, as defined in G.S. 97-2(11), shall be allowed for the first seven calendar days of disability resulting from an injury, except the benefits provided for in G.S. 97-25. Provided however, that in the case the injury results in disability of more than ~~28~~ 21 days, the compensation shall be allowed from the date of the disability. Nothing in this section shall prevent an employer from allowing an employee to use paid sick leave, vacation or annual leave, or disability benefits provided directly by the employer during the first seven calendar days of disability. (1929, c. 120, s. 28; 1983, c. 599.)"

Sec. 6. G.S. 97-29 reads as rewritten:

"§ 97-29. *Compensation rates for total incapacity.*--Except as hereinafter otherwise provided, where the incapacity for work resulting from the injury is total, the employer shall pay or cause to be paid, as hereinafter provided, to the injured employee during such total disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of his average weekly wages, but not more than the amount established annually to be effective October 1 as provided herein, nor less than thirty dollars (\$30.00) per week.

In cases of total and permanent disability, compensation, including reasonable and necessary nursing services, medicines, sick travel, medical, hospital, and other treatment or care of rehabilitative services shall be paid for by the employer during the lifetime of the injured employee. If death results from the injury then the employer shall pay compensation in accordance with the provisions of G.S. 97-38.

The weekly compensation payment for members of the North Carolina national guard and the North Carolina State guard shall be the maximum amount established annually in accordance with the last paragraph of this section per week as fixed herein. The weekly

## APPENDIX G

Sec. 7.21A. (a) Article 87 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-87-10. Workers' Compensation Fund for the benefit of volunteer safety workers.

(a) Definition. -- As used in this section, the term 'eligible unit' means a volunteer fire department or volunteer rescue/EMS unit that is not part of a unit of local government and is exempt from State income tax under G.S. 105-130.11.

(b) Creation. -- The Workers' Compensation Fund is created in the Department of Insurance as an expendable trust fund. Accordingly, interest and other investment income earned by the Fund accrues to it, and revenue in the Fund at the end of a fiscal year remains in the Fund and does not revert.

(c) Use. -- Revenue in the Workers' Compensation Fund shall be used to provide workers' compensation benefits to members of eligible units. Chapter 97 of the General Statutes governs the payment of benefits from the Fund. Benefits are payable for compensable injuries or deaths that occur on or after July 1, 1996.

(d) Administration. -- The State Fire and Rescue Commission, established under G.S. 58-78-1, shall administer the Workers' Compensation Fund and shall perform this duty by contracting with a third-party administrator. The contracting procedure is not subject to Article 3C of Chapter 143 of the General Statutes. The reasonable and necessary expenses incurred by the Commission in administering the Fund shall be paid out of the Fund by the State Treasurer. The Commission may adopt rules to implement this section.

(e) Revenue Source. -- Revenue is credited to the Workers' Compensation Fund from appropriations made to the Department of Insurance for this purpose. In addition, every eligible unit that elects to participate shall pay into the Fund an amount set annually by the State Fire and Rescue Commission to ensure that the Fund will be able to meet its payment obligations under this section. The amount shall be set as a per capita fixed dollar amount for each member of the roster of the eligible unit.

The payment shall be made to the State Fire and Rescue Commission on or before July 1 of each year. The Commission shall remit the payments it receives to the State Treasurer, who shall credit the payments to the Fund. If the Commission does not receive an annual payment from an eligible unit by July 1, then that unit shall not receive workers' compensation coverage from the Fund for the fiscal year that begins that July 1."

(b) The first per member payment that eligible fire departments and rescue/EMS units must make to the State Fire and Rescue Commission under G.S. 58-87-10 is payable on or before July 1, 1996.

(c) G.S. 58-78-5(a) is amended by adding a new subdivision to read:

"(16) To provide workers' compensation benefits under G.S. 58-87-10, to create a Volunteer Safety Workers' Compensation Board to assist it in performing this duty, and to reimburse the members of the Commission's Volunteer Safety Workers' Compensation Board in accordance with G.S. 138-5 for travel and subsistence expenses incurred by them."

(d) G.S. 58-86-35 reads as rewritten:

**"§ 58-86-35. Firemen's application for membership in fund; monthly payments by members; payments credited to separate accounts of members.**

Those firemen who are eligible pursuant to G.S. 58-86-25 may make application for membership to the board. Each fireman upon becoming a member of the fund shall pay the director of the fund the sum of ~~five ten~~ ten dollars (~~\$5.00~~) (\$10.00) per month. The monthly payments shall be credited to the separate account of the

member and shall be kept by the custodian so it is available for payment on withdrawal from membership or retirement."

(e) G.S. 58-86-40 reads as rewritten:

"§ 58-86-40. Rescue squad worker's application for membership in funds; monthly payments by members; payments credited to separate accounts of members.

Those rescue squad workers eligible pursuant to G.S. 58-86-30 may ~~make application~~ apply to the board for membership. ~~All persons who subsequently become rescue squad workers may make application for membership.~~ Each eligible rescue squad worker upon becoming a member shall pay the director of the fund the sum of ~~five ten~~ ten dollars ~~(\$5.00) (\$10.00)~~ per month. ~~A rescue squad worker who, on the date of the establishment of the fund, has service as a rescue squad worker certified by the Department of State Treasurer, may make a lump sum payment of five dollars (\$5.00) per month for each month of service as an eligible rescue squad worker as defined by G.S. 58-86-30, on or before December 31, 1983, for as many as 240 months together with interest at an annual rate of six percent (6%).~~ The

The monthly payments shall be credited to the separate account of the member and shall be kept by the custodian so it is available for payment on withdrawal from membership or retirement."

(f) G.S. 58-86-45(b) reads as rewritten:

"(b) ~~Effective April 1, 1987, any~~ An eligible fireman or rescue squad worker who ~~has not reached his thirty fifth birthday who is eligible and who is not yet 35 years old and~~ has not previously elected to become a member may ~~make application through~~ apply to the board of trustees for membership in the fund at any time. ~~The person shall~~ Upon becoming a member, the worker must make a lump sum payment of ~~five ten~~ ten dollars ~~(\$5.00) (\$10.00)~~ per month retroactively to the time ~~he the worker~~ first became eligible to become a member, plus interest at an annual rate to be set by the board of trustees, for each year of ~~his~~ retroactive payments. Upon making this lump sum payment, the ~~person worker~~ shall be given credit for all prior service in the same manner as if ~~he the worker~~ had ~~made application~~ applied for membership at ~~the time he first became~~ upon first becoming eligible. Any

A member who has not reached his thirty fifth birthday is not yet 35 years old, who made application applied for membership subsequent to the time he was first eligible after first becoming eligible, and who did not receive credit for prior service may receive credit for ~~such the~~ prior service upon making a lump sum payment of ~~five ten~~ ten dollars ~~(\$5.00) (\$10.00)~~ per for each month since the worker first became eligible, retroactively to the time he first became eligible, plus interest at an annual rate to be set by the board of trustees, for each year of ~~his~~ retroactive payments. Upon making this lump sum payment, the date of membership shall be the same as if ~~he the worker~~ had ~~made application~~ applied for membership at ~~the time he was first~~ upon first becoming eligible."

(g) G.S. 58-86-55 reads as rewritten:

"§ 58-86-55. Monthly pensions upon retirement.

Any member who has served 20 years as an 'eligible fireman' or 'eligible rescue squad worker' in the State of North Carolina, as provided in G.S. 58-86-25 and G.S. 58-86-30, and who has attained the age of 55 years is entitled to be paid a monthly pension from this fund. The monthly pension shall be in the amount of one hundred ~~ten~~ thirty-five dollars ~~(\$110.00) (\$135.00)~~ per month. Any retired fireman receiving a pension of one hundred ~~ten~~ thirty-five dollars (\$110.00) per month shall, effective July 1, 1994, 1995, receive a pension of one hundred ~~ten~~ thirty-five dollars ~~(\$110.00) (\$135.00)~~ per month.

Members shall pay ~~five ten~~ ten dollars ~~(\$5.00) (\$10.00)~~ per month as required by G.S. 58-86-35 and G.S. 58-86-40 for a period of no longer than 20 years. No 'eligible rescue squad member' shall receive a pension prior to July 1, 1983. No ~~person~~

member shall be entitled to a pension hereunder until ~~his~~ the member's official duties as a fireman or rescue squad worker for which ~~he~~ the member is paid compensation shall have been terminated and ~~he~~ the member shall have retired as such according to standards or rules fixed by the board of trustees.

Any A member who is totally and permanently disabled while in the discharge of ~~his~~ the member's official duties as a result of bodily injuries sustained or as a result of extreme exercise or extreme activity experienced in the course and scope of ~~his~~ those official duties and who leaves the fire or rescue squad service because of this disability shall be entitled to be paid from the fund a monthly benefit in an amount of one hundred ~~ten~~ thirty-five dollars ~~(\$110.00)~~ (\$135.00) per month beginning the first month after ~~his~~ the member's fifty-fifth birthday. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of ~~his~~ the application, and annually thereafter. Any disabled member shall not be required to make the monthly payment of ~~five ten~~ dollars ~~(\$5.00)~~ (\$10.00) as required by G.S. 58-86-35 and G.S. 58-86-40.

Any A member who is totally and permanently disabled for any cause, other than line of duty, who leaves the fire or rescue squad service because of this disability and who has at least 10 years of service with the pension fund, may be permitted to continue making a monthly contribution of ~~five ten~~ dollars ~~(\$5.00)~~ (\$10.00) to the fund until ~~he~~ the member has ~~paid into the fund the sum of one thousand two hundred dollars (\$1,200).~~ made contributions for a total of 240 months. The member shall upon attaining the age of 55 years be entitled to receive a pension as provided by this section. All applications for disability are subject to the approval of the board who may appoint physicians to examine and evaluate the disabled member prior to approval of ~~his~~ the application and annually thereafter.

Any A member who, because his residence is annexed by a city under Part 2 or Part 3 of Article 4 of Chapter 160A of the General Statutes, or whose department is closed because of an annexation by a city under Part 2 or Part 3 of Article 4 of Chapter 160A of the General Statutes, and because of such annexation is unable to perform as a fireman of any status, and if the member has at least 10 years of service with the pension fund, may be permitted to continue making a monthly contribution of ~~five ten~~ dollars ~~(\$5.00)~~ (\$10.00) to the fund until ~~he~~ the member has ~~paid into the fund the sum of one thousand two hundred dollars (\$1,200).~~ made contributions for a total of 240 months. The member upon attaining the age of 55 years and completion of such contributions shall be entitled to receive a pension as provided by this section. Any application to make monthly contributions under this section shall be subject to a finding of eligibility by the Board of Trustees upon application of the member.

The pensions provided shall be in addition to all other pensions or benefits under any other statutes of the State of North Carolina or the United States, notwithstanding any exclusionary provisions of other pensions or retirement systems provided by law."

(h) G.S. 58-86-30 reads as rewritten:

"§ 58-86-30. 'Eligible rescue squad worker' defined; determination and certification of eligibility.

'Eligible rescue squad worker' means any a person who is a member of a rescue or emergency medical services squad who that is eligible for membership in the North Carolina Association of Rescue and Emergency Medical Services, Squads, Inc., and who has attended a minimum of 36 hours of training and meetings in the last calendar year. Each rescue or emergency medical services squad worker eligible for membership in the North Carolina Association of Rescue and Emergency Medical Services, Squads, Inc., must file a roster certified by the secretary of the association of those rescue or emergency medical services squad workers meeting the ~~association~~

requirements of this section with the State Treasurer by January 1 of each calendar year.

'Eligible rescue squad worker' does not mean 'eligible fireman' as defined by G.S. 58-86-25, nor may an 'eligible rescue squad worker' qualify also as an 'eligible fireman' in order to receive double benefits available under this Article."

(i) The changes made to G.S. 58-86-45 and G.S. 58-86-55 by this Part do not affect the credit received for service performed before July 1, 1995. The increase in monthly pension contributions from five dollars (\$5.00) to ten dollars (\$10.00) in G.S. 58-86-55 does not affect the amount of monthly contributions made prior to July 1, 1995.

(j) The caption for Article 87 of Chapter 58 of the General Statutes reads as rewritten:

"ARTICLE 87.

"~~Volunteer Fire Department and Rescue/EMS Funds. Safety Workers Assistance.~~"

(k) G.S. 58-87-1(b) reads as rewritten:

"(b) A fire department is eligible for a grant under this section ~~if~~ if it meets all of the following conditions:

- (1) It serves a response area of 6,000 or less in ~~population;~~ population.
- (2) It ~~is all volunteer, and~~ has no more than two paid members and otherwise consists of volunteer members.
- (3) It has been certified by the Department of Insurance.

In making the population determination under subdivision (1), the Department shall use the ~~latest decennial U.S. Census population data;~~ most recent annual population estimates certified by the State Planning Officer."

(l) G.S. 58-87-5(b) reads as rewritten:

"(b) A rescue or rescue/EMS unit is eligible for a grant under this section ~~if~~ if it meets all of the following conditions:

- (1) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1066, s. 33(a), effective July 15, 1990.
- (2) It ~~is all volunteer, except that the rescue or rescue/EMS unit may have paid members, not to exceed two positions, either full-time or part-time, and~~ has no more than two paid members and otherwise consists of volunteer members.
- (3) It has been recognized by the Department as an organization that provides rescue or rescue and emergency medical ~~services; and~~ services.
- (4) It satisfies the eligibility criteria established by the Department under subsection (a) of this section."

(m) The Legislative Research Commission shall study the issue of assistance to volunteer fire, rescue, and emergency medical service units to determine the types and amounts of assistance that are appropriate for the State and other levels of government. In conducting the study, the Commission may consider the funding sources for and uses of funds in the Firemen's Relief Fund established in Article 84 of Chapter 58 of the General Statutes, the North Carolina Firemen's and Rescue Squad Workers' Pension Fund established in Article 86 of Chapter 58 of the General Statutes, the Volunteer Fire Department Fund, the Volunteer Rescue/EMS Fund, and the Workers' Compensation Fund established in Article 87 of Chapter 58 of the General Statutes, and the Rescue Squad Workers' Relief Fund established in Article 88 of Chapter 58 of the General Statutes. The Commission shall make a final report to the 1996 Regular Session of the 1995 General Assembly.

(n) Subsections (d) through (i) of this section are effective July 1, 1995. The remainder of this section is effective upon ratification.



**North Carolina General Assembly  
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**January 25, 1996**

**Representative Zeno L. Edwards, Jr., Cochair  
North Carolina Health Care Reform Commission  
212 Riverside Drive  
Washington, North Carolina 27889**

Dear Representative Edwards:

By letter of November 8, 1995, we referred three issues to the Health Care Reform Commission for study and report to the General Assembly. We have determined that one of those issues, State and Other Governmental Assistance to Volunteer Fire, Rescue, and Emergency Medical Service Units (1995 S.L., c. 507, s. 7.21A(m)), would be more appropriately and economically studied by the Legislative Research Commission's (LRC) Workers Compensation Committee. The cochairs of the Workers Compensation Committee, Representative Shawn Lemmond and Senator John Kerr, have agreed to study and report on this matter to the 1996 Session of the General Assembly.

We, therefore, withdraw the request that you study this issue and, by a copy of this letter, refer the study of State and Other Governmental Assistance to Volunteer Fire, Rescue, and Emergency Medical Service Units to the LRC's Committee on Workers Compensation. We thank you and the Health Care Reform Commission for the willingness and readiness to undertake the other two assigned studies.

Yours truly,

**Marc Basnight**

**Harold J. Brubaker**

**Cochairmen**

cc. **Mrs. Michael Hooker, Cochair  
Representative Shawn Lemmond  
Senator John Kerr  
Mr. Terrence D. Sullivan  
Dr. James G. Jones  
Mr. Bill Gilkeson  
Mr. Linwood Jones  
Mr. Tony Goldman**



**COMMENTS CONCERNING THE NORTH CAROLINA EMERGENCY SERVICES  
WORKERS' COMPENSATION FUND**

**HISTORY**

For emergency service departments the rate per hundred in 1985 was \$2.92 per hundred times an assigned risk surcharge of 8%. The rate per hundred in 1995 was \$18.29 times an assigned risk surcharge of 14%. This is a 660% increase in ten years. Parkwood Volunteer Fire & Rescue Department has an annual payroll today, including the \$300 per volunteer, of \$400,000. Using manual rates their workers' compensation cost in 1985 would have been \$12,614. Using manual rates their workers' compensation cost in 1995 was \$83,585. The typical all volunteer department with 30 members would have paid \$737 in 1985. In 1995 their cost was \$2,059.

Many departments are finding it necessary to hire one or two full-time people in order to meet the current demands of their department. If they pay a full-time person \$20,000 their cost to provide workers' compensation for this person is \$4,170 per year. Many find they simply cannot pay the additional \$4,170 per year per person.

The tremendous increase in the rate class started when the League of Municipalities and The County Commissioner's Association created self-insurance funds for their members. This action removed about 94% of the premium from the 7704 rate class and only took about 10% of the people. Without sufficient funding and lack of organization, non-municipal departments found they could not establish their own fund and found the only market available to them was in the Assigned Risk Plan. In the Assigned Risk Plan they have not had the necessary loss prevention efforts or managed care that have very positive effects on the experience of any rate class. This market is also the most expensive.

In 1995 the Legislature created the Volunteer Safety Workers' Compensation Fund. This Fund is the responsibility of the North Carolina Fire & Rescue Commission. A Board of nine members has been created. The Legislature provide \$1,500,000 of funding in 1995 and told the supporters of the bill that permanent funding would be approved in the 1996 session. The Legislature was told that funding of about \$1,500,000 would come from the emergency service departments that were a part of the fund.

**PRO FORMA STATEMENT OF INCOME NEEDED AND EXPENSES EXPECTED**

**REVENUES**

Member Payments	\$1,500,000	
DOI Appropriation	<u>4,500,000</u>	
Total Revenues		\$6,000,000

**EXPENSES**

Losses and Loss Adjustment Expenses	\$4,000,000	
Reinsurance Cost and Commissions	600,000	
Administrative Fee	900,000	
Professional Fees	60,000	
Other Expenses	<u>85,000</u>	
Total Expenses		<u>\$5,645,000</u>

**NET INCOME** \$ 355,000

**INFORMATION ABOUT THE FUND**

The Fund will be operated by a Fund Administrator. We have received proposals from three of the best available. We have not chosen the Administrator as of this date. We hope to complete this within the next two weeks.

Claims management and loss prevention are the primary areas we will concentrate on. We believe that by providing the necessary support in these two areas we will be able to effect significant savings in the cost of claims, not to mention the indirect cost experienced by the departments. This, in the long run, will lead to the fund becoming self supporting and will create savings all people in North Carolina, as well as solve many problems for the emergency service organizations.

**A Report on the Sources and Uses of Funds for the  
Following Funds:**

**Firemen's and Rescue Squad Workers'  
Pension Fund**

**Firemen's Relief Fund**

**Rescue Squad Worker's Relief Fund**

**Volunteer Fire Department Fund**

**Volunteer Rescue EMS Fund**

**Workers' Compensation Fund**

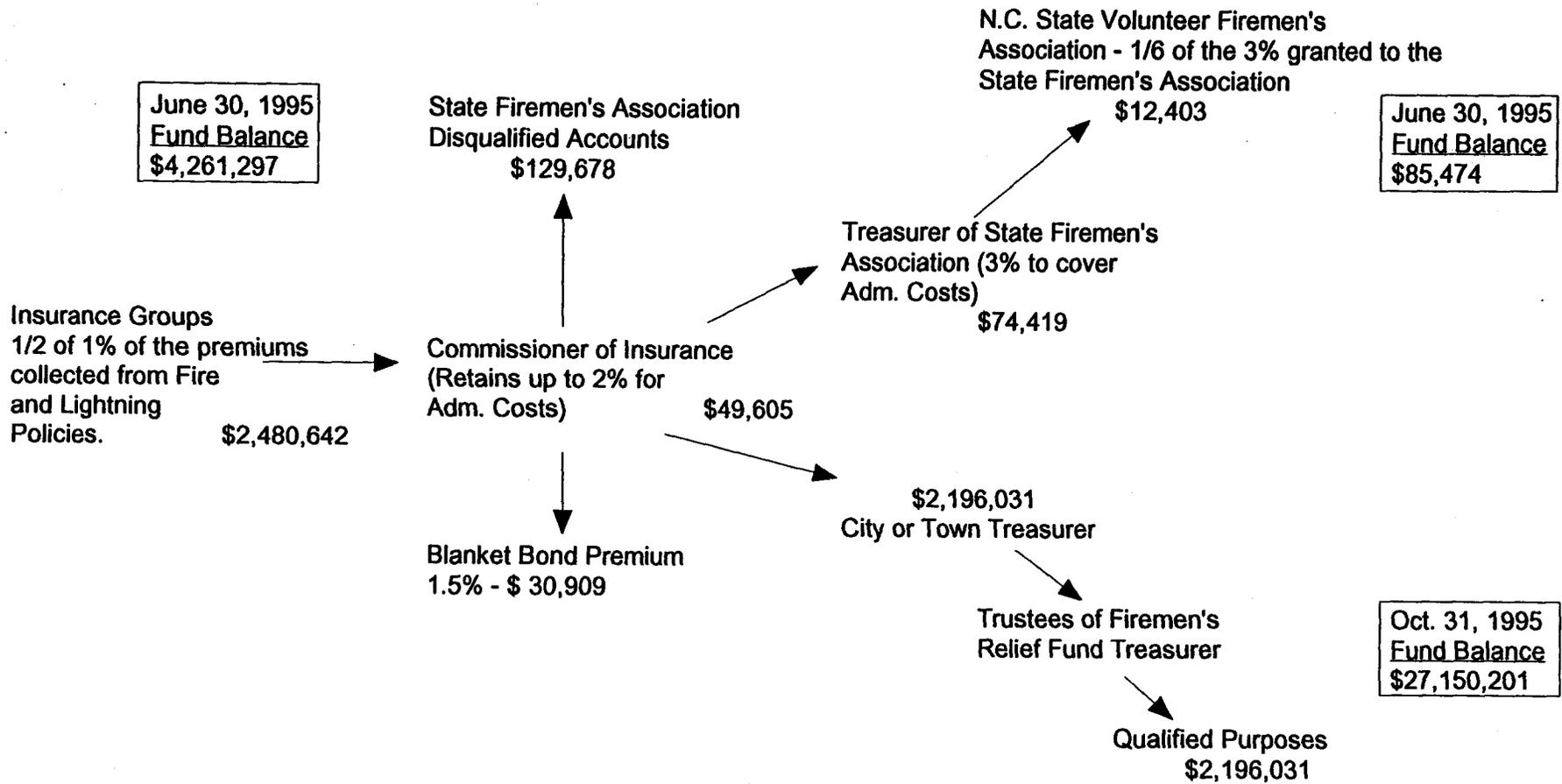
**FISCAL RESEARCH DIVISION  
MARCH 6, 1996**

**FIREMEN'S AND RESCUE SQUAD WORKERS' PENSION FUND**  
**STATEMENT OF INCOME**  
**FISCAL YEAR 1995-1996**  
**(ESTIMATED)**

Beginning Balance	\$110,195,711
State Appropriations	11,735,187
Member Contributions	2,360,878
Investment Income	6,910,320
Total Receipts	21,006,385
Pension Benefits	10,831,260
Refunds	350,310
Administrative Expense	225,922
Total Disbursements	11,407,492
Additions To Reserves	9,598,893
Ending Balance	\$119,794,604

Prepared by: Retirement Systems Division  
Department of State Treasurer  
March 1, 1996

# Firemen's Relief Fund



\* Data based on fiscal year 1994 - 95

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## **Local Firemen's Relief Fund**

GS 58-84-35

The board of trustees shall have entire control of the funds derived from the provisions of this Article, and shall disburse the funds only for the following purposes:

- (1) To safeguard any fireman in active service from financial loss, occasioned by sickness contracted or injury received while in the performance of his duties as a fireman.
- (2) To provide a reasonable support for those actually dependent upon the services of any fireman who may lose his life in the fire service of his town, city, or State, either by accident or from disease contracted or injury received by reason of such service. The amount is to be determined according to the earning capacity of the deceased.
  - (2.1) To provide assistance, upon approval by the Secretary of the State Firemen's Association, to a destitute member fireman who has served honorably for at least five years.
- (3) Repealed by Session Laws 1985, c. 666, s. 61.
- (4) To provide for the payment of any fireman's assessment in the Firemen's Fraternal Insurance Fund of the State of North Carolina if the board of trustees finds as a fact that said fireman is unable to pay the said assessment by reason of disability.
- (5) To provide for benefits of supplemental retirement, workers compensation, and other insurance and pension protection for firemen otherwise qualifying for benefits from the Firemen's Relief Fund as set forth in Article 85 of this Chapter.
- (6) To provide for educational benefits to firemen and their dependents who otherwise qualify for benefits from the Firemen's Relief Fund as set forth in Article 85 of this Chapter.

Notwithstanding any other provisions of law, no expenditures shall be made pursuant to subsections (5) and (6) of this section unless the State Firemen's Association has certified that such expenditures will not render the Fund actuarially unsound for the purposes of providing the benefits set forth in subsections (1), (2), and (4) of this section. If, for any reason, funds made available for subsections (5) and (6) of this section shall be insufficient to pay in full any benefits, the benefits pursuant to subsections (5) and (6) shall be reduced pro rata for as long as the amount of insufficient funds exists. No claim shall accrue with respect to any amount by which a benefit under subsections (5) and (6) shall have been reduced.

(1907, c. 831, s. 6; 1919, c. 180; C.S., s. 6069; Ex. Sess. 1921, c. 55; 1923, c. 22; 1925, c. 41; 1945, c. 74, s. 2; 1985, c. 666, s. 61; 1987, c. 174, ss. 2, 3.)

## State Firemen's Association Relief Fund

GS 58-85-1

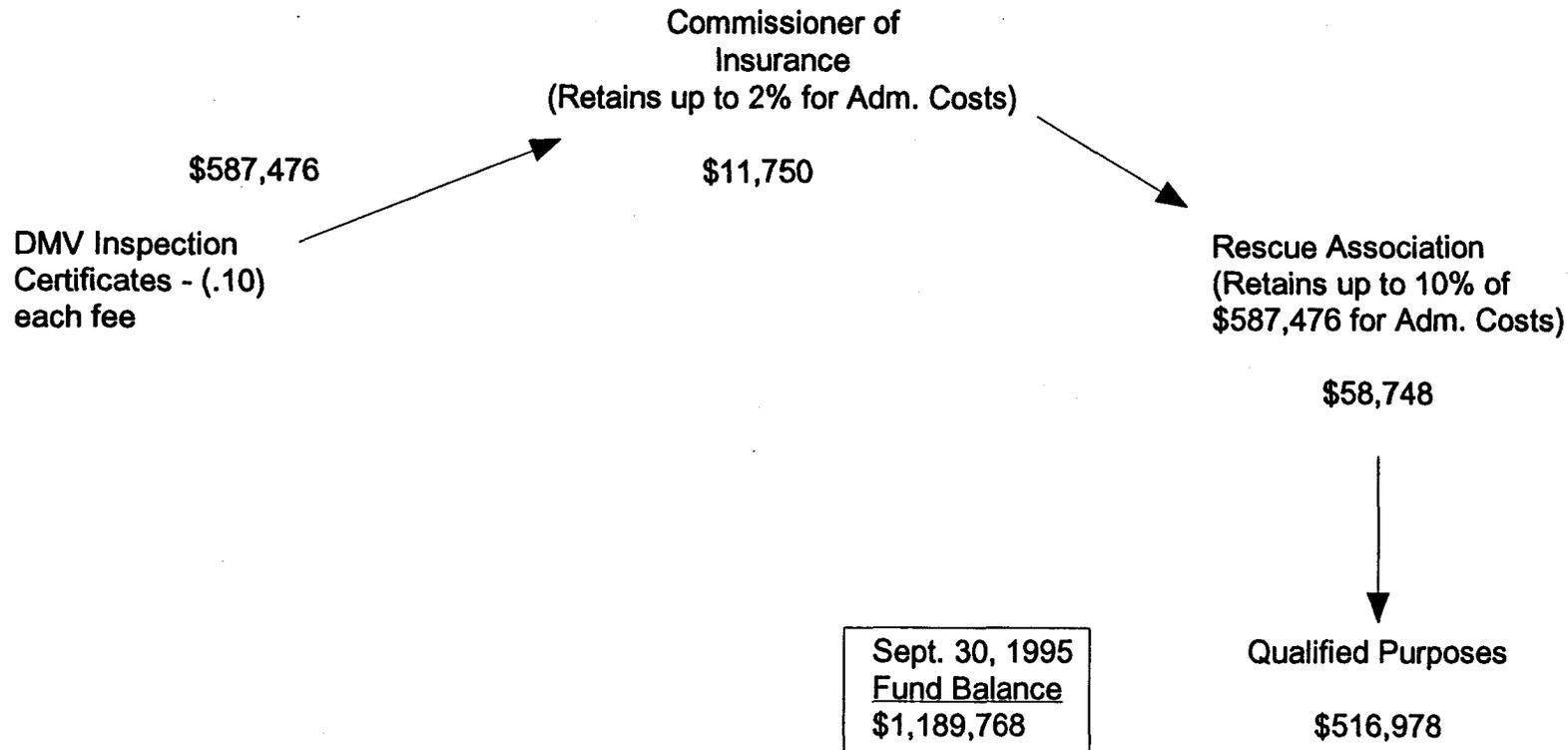
The money paid into the hands of the treasurer of the North Carolina State Firemen's Association shall be known and remain as the "Firemen's Relief Fund" of North Carolina, and shall be used as a fund for the relief of firemen, members of such Association, who may be injured or rendered sick by disease contracted in the actual discharge of duty as firemen, and for the relief of widows, children, and if there be no widow or children, then dependent mothers of such firemen killed or dying from disease so contracted in such discharge of duty; to be paid in such manner and in such sums to such individuals of the classes herein named and described as may be provided for and determined upon in accordance with the constitution and bylaws of said Association, and such provisions and determinations made pursuant to said constitution and bylaws shall be final and conclusive as to the persons entitled to benefits and as to the amount of benefit to be received, and no action at law shall be maintained against said Association to enforce any claim or recover any benefit under this Article or under the constitution and bylaws of said Association; but if any officer or committee of said Association omit or refuse to perform any duty imposed upon him or them, nothing herein contained shall be construed to prevent any proceedings against said officer or committee to compel him or them to perform such duty. No fireman shall be entitled to receive any benefits under this section until the firemen's relief fund of his city or town shall have been exhausted. Notwithstanding the above provisions, the Executive Board of the North Carolina State Firemen's Association is hereby authorized to:

- 1) grant educational scholarships to members and the children of members.
- 2) subsidize premium payments of members over 65 years of age to the Firemen's Fraternal Insurance Fund of the North Carolina State Firemen's Association, and
- 3) to provide accidental death and dismemberment insurance for members of those fire departments not eligible for benefits pursuant to standards of certification adopted by the State Firemen's Association for the use of local relief funds.

(1891, c. 468, s. 3; Rev., s. 4393; C.S., s. 6058; 1925, c. 41; 1981 (Reg. Sess., 1982), c. 1215; 1987, c. 174, s. 4; 1993 (Reg. Sess., 1994), c. 678, s. 33.)

# Rescue Squad Worker's Relief Fund

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\* Data based on fiscal year 1994 - 95

## **Rescue Squad Worker's Relief Fund**

**GS 58-88-5**

(c) The Commissioner of Insurance has exclusive control of the Fund and shall disburse revenue in the Fund to the Association only for the following purposes:

(1) To safeguard any rescue or EMS worker in active service from financial loss, occasioned by sickness contracted or injury received while in the performance of his or her duties as a rescue or EMS worker.

(2) To provide a reasonable support for those persons actually dependent upon the services of any rescue or EMS worker who may lose his or her life in the service of his or her town, county, city, or the State, either by accident or from disease contracted or injury received by reason of such service. The amount is to be determined according to the earning capacity of the deceased.

(3) To award scholarships to children of members, deceased members or retired members in good standing, for the purpose of attending a two year or four year college or university, and for the purpose of attending a two year course of study at a community college or an accredited trade or technical school, any of which is located in the State of North Carolina. Continuation of the payment of educational benefits for children of active members shall be conditioned on the continuance of active membership in the rescue or EMS service by the parent or parents.

(4) To pay death benefits to those persons who were actually dependent upon any member killed in the line of duty.

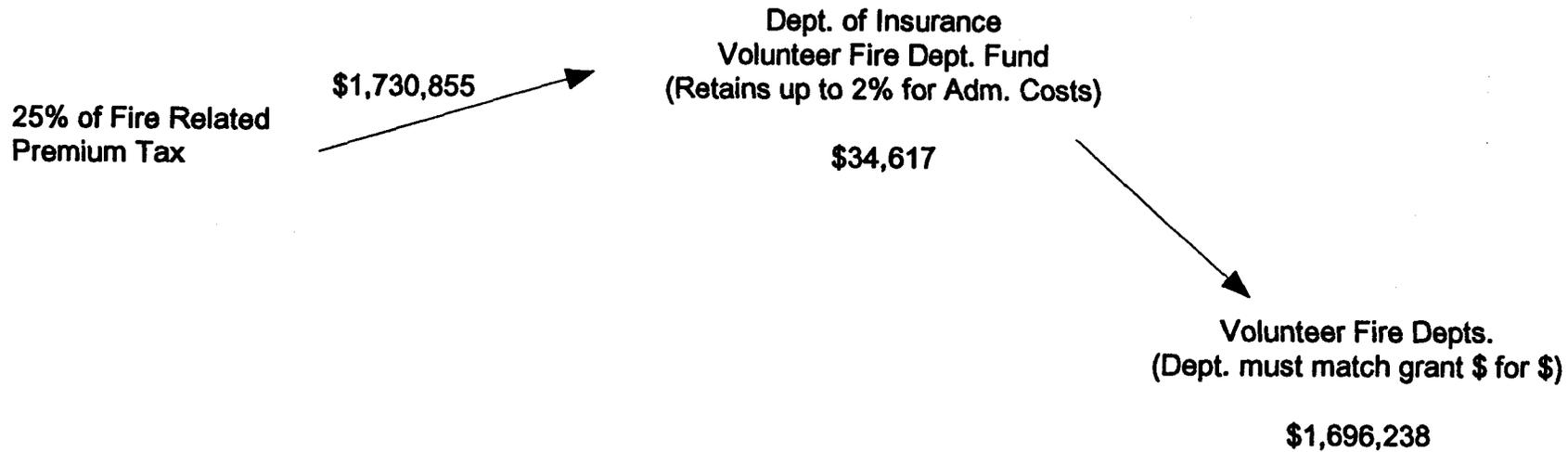
(4a) To pay additional benefits approved by the Board of Trustees of the Fund to rescue and EMS workers who are eligible pursuant to G.S. 58-88-10 and who are members of the Association.

(5) Notwithstanding any other provision of law, no expenditures shall be made pursuant to subdivisions (1), (2), (3), (4), and (4a) of this subsection unless the Board has certified that the expenditures will not render the Fund actuarially unsound for the purpose of providing the benefits set forth in subdivisions (1), (2), (3), (4), and (4a). If, for any reason, funds made available for subdivisions (1), (2), (3), (4), and (4a) are insufficient to pay in full any benefit, the benefits pursuant to subdivisions (1), (2), (3), (4), and (4a) shall be reduced pro rata for as long as the amount of insufficient funds exists. No claims shall accrue with respect to any amount by which a benefit under subdivisions (1), (2), (3), (4), and (4a) has been reduced.

(1987, c. 584, s. 5; 1987 (Reg. Sess., 1988), c. 1062, s. 10; 1989 (Reg. Sess., 1990), c. 1066, s. 33(c); 1995, c. 421, s. 1.)

# Volunteer Fire Department Fund

June 30, 1995 Fund Balance \$2,362,256

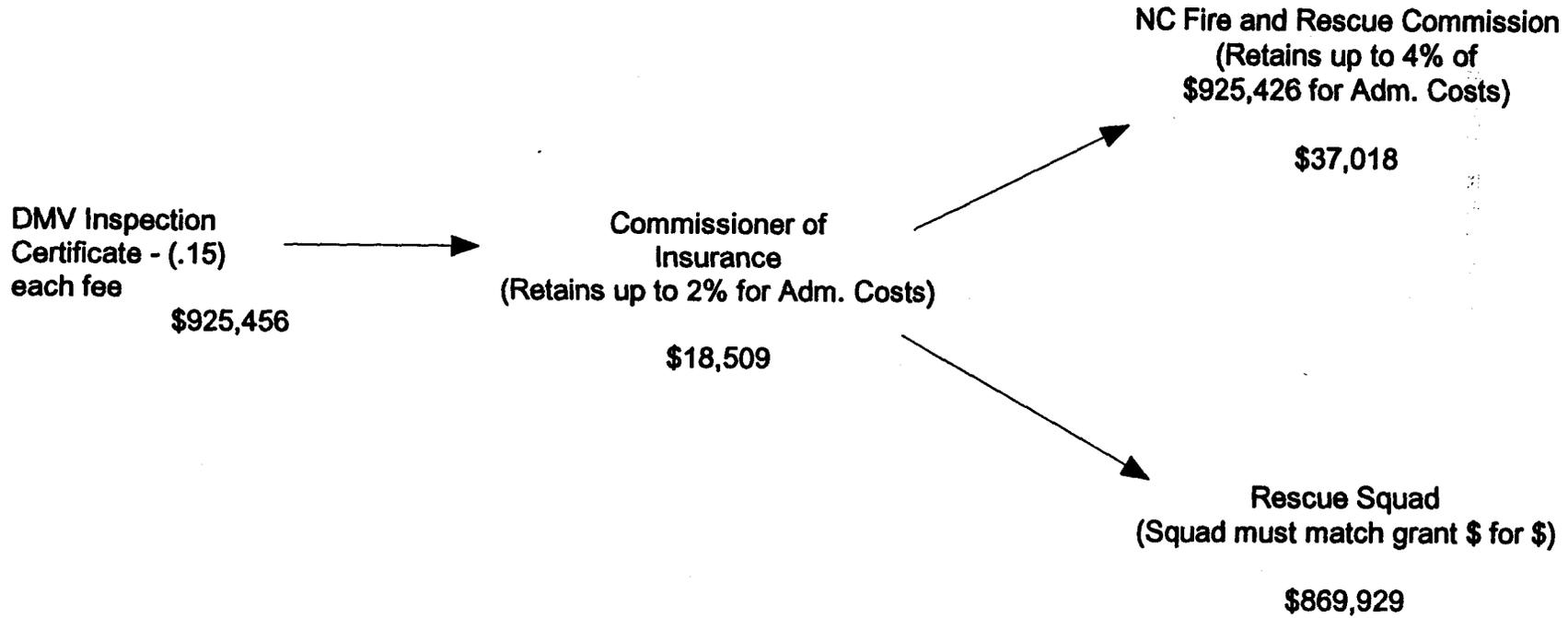


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\* Data based on fiscal year 1994 - 95

# Volunteer Rescue EMS Fund

June 30, 1995 Fund Balance = \$427,890



\* Data based on fiscal year 1994 - 95

# Workers' Compensation Fund

Effective for the 1996 - 97 fiscal year

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State Appropriations  
\$1,500,000

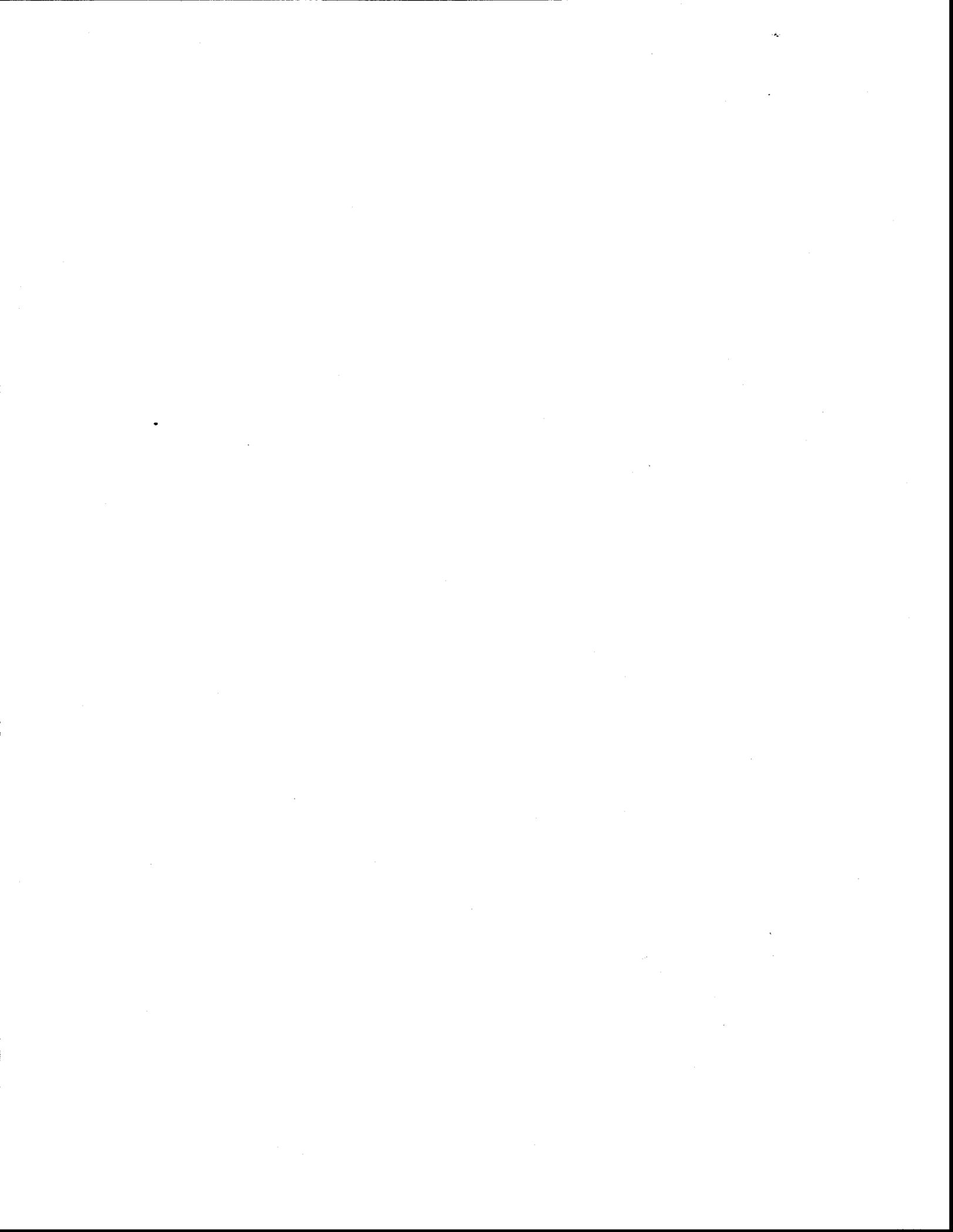
Member Fee



Dept. of Insurance

State Fire and Rescue Commission  
(Third Party Administrator)

\* Data based on fiscal year 1996 - 97



## APPENDIX H

### § 97-26. Fees allowed for medical treatment; malpractice of physician.

(a) Fee Schedule. — The Commission shall adopt a schedule of maximum fees for medical compensation, except as provided in subsection (b) of this section, and shall periodically review the schedule and make revisions pursuant to the provisions of this Article.

The fees adopted by the Commission in its schedule shall be adequate to ensure that (i) injured workers are provided the standard of services and care intended by this Chapter, (ii) providers are reimbursed reasonable fees for providing these services, and (iii) medical costs are adequately contained.

Prior to adoption of a fee schedule, the Commission shall publish notice of its intent to adopt the schedule in the North Carolina Register and hold a public hearing. The published notice shall include the location, date and time of the public hearing, the proposed effective date of the fee schedule, the period of time during which the Commission will receive written comments on the proposed schedule, and the person to whom comments and questions should be directed. In addition to publication in the North Carolina Register, the notice may be mailed to parties who have requested notice of the fee schedule hearing. The public hearing shall be held no earlier than 15 days after the publication of the notice. The Commission shall receive written comments for at least 30 days or until the date of the public hearing, whichever is later, after which the Commission may adopt the fee schedule.

The Commission may consider any and all reimbursement systems and plans in establishing its fee schedule, including, but not limited to, the Teachers' and State Employees' Comprehensive Major Medical Plan (hereinafter, "State Plan"), Blue Cross and Blue Shield, and any other private or governmental plans. The Commission may also consider any and all reimbursement methodologies, including, but not limited to, the use of current procedural terminology ("CPT") codes, diagnostic-related groupings ("DRGs"), per diem rates, capitated payments, and resource-based relative-value system ("RBRVS") payments. The Commission may consider statewide fee averages, geographical and community variations in provider costs, and any other factors affecting provider costs.

An appeal from a decision of the Commission establishing a fee schedule, by any party aggrieved thereby, shall be to the North Carolina Court of Appeals. The decision of the Commission shall be affirmed if supported by substantial evidence. For the purposes of the appeal, the Commission is a party.

(b) Hospital Fees. — Payment for medical compensation rendered by a hospital participating in the State Plan shall be equal to the payment the hospital receives for the same treatment and services under the State Plan. Payment for a particular type of medical compensation that is not covered under the State Plan shall be based on the allowable charge under the State Plan for comparable services or treatment, as determined by the Commission. Each hospital subject to the provisions of this subsection shall be reimbursed the amount provided for in this subsection unless it has agreed under contract with the insurer or managed care organization to accept a different amount or reimbursement methodology.

(c) Maximum Reimbursement for Providers Under Subsection (a). — Each health care provider subject to the provisions of subsection (a) of this section shall be reimbursed the amount specified under the fee schedule unless the provider has agreed under contract with the insurer or managed care organization to accept a different amount or reimbursement methodology. In any instance in which neither the fee schedule nor a contractual fee applies, the maximum reimbursement to which a provider under subsection (a) is entitled under this Article is the usual, customary, and reasonable charge for the service or treatment rendered. In no event shall a provider under subsection (a) charge more than its usual fee for the service or treatment rendered.

(d) Information to Commission. — Each health care provider seeking reimbursement for medical compensation under this Article shall provide the Commission information requested by the Commission for the development of fee schedules and the determination of appropriate reimbursement.

(e) When Charges Submitted. — Health care providers shall submit charges to the insurer or managed care organization within 30 days of treatment, within 30 days after the end of the month during which multiple treatments were provided, or within such other reasonable period of time as allowed by the Commission. If an insurer or managed care organization disputes a portion of a health care provider's bill, it shall pay the uncontested portion of the bill and shall resolve disputes regarding the balance of the charges in accordance with this Article or its contractual arrangement.

(f) Repeating Diagnostic Tests. — A health care provider shall not authorize a diagnostic test previously conducted by another provider, unless the health care provider has reasonable grounds to believe a change in patient condition may have occurred or the quality of the prior test is doubted. The Commission may adopt rules establishing reasonable requirements for reports and records to be made available to other health care providers to prevent unnecessary duplication of tests and examinations. A health care provider that violates this subsection shall not be reimbursed for the costs associated with administering or analyzing the test.

(g) Direct Reimbursement. — The Commission may adopt rules to allow insurers and managed care organizations to review and reimburse charges for medical compensation without submitting the charges to the Commission for review and approval.

(h) Malpractice. — The employer shall not be liable in damages for malpractice by a physician or surgeon furnished by him pursuant to the provisions of this section, but the consequences of any such malpractice shall be deemed part of the injury resulting from the accident, and shall be compensated for as such. (1929, c. 120, s. 26; 1955, c. 1026, s. 3; 1993 (Reg. Sess., 1994), c. 679, s. 2.3.)

**Editor's Note.** — Session Laws 1993 (Reg. Sess., 1994), c. 679, which amended this section, in s. 11.1 provides in part: "This act is effective upon ratification, except as follows:

"(b) G.S. 97-26(b) and G.S. 97-26(f), as enacted in Section 2.3, become effective October 1, 1994. G.S. 97-26(a), as enacted in Section 2.3, is effective upon ratification (July 5, 1994) but the provisions of the third paragraph of said subsection shall not apply to the fee sched-

ule in effect as of the date of ratification of this act [July 5, 1994]."

**Effect of Amendments.** — Session Laws 1993 (Reg. Sess., 1994), c. 679, s. 2.3, "The Workers' Compensation Reform Act of 1994," substituted "Fees allowed for medical treatment" for "Liability for medical treatment measured by average cost in community" in the catchline of the section, and rewrote this section. For effective date and applicability, see editor's note.

#### CASE NOTES

This section contains the correct measure of employer liability for hospital charges. *Charlotte-Mecklenburg Hosp. Auth. v. North Carolina Indus. Comm'n*, 336 N.C. 200, 443 S.E.2d 716 (1994).

The legislature intended (1) that medical compensation, including hospital services provided by the employer, ordered by the Industrial Commission, provided pursuant to emergencies, or chosen by the employee, subject to the approval of the Commission, be limited by the terms and conditions contained in § 97-25; (2) that such medical compensation be reasonably required to effect a cure or give relief or tend to lessen the period of disability; and (3) that the employer not be charged more than his

employee would have been had the employee paid for the services. *Charlotte-Mecklenburg Hosp. Auth. v. North Carolina Indus. Comm'n*, 336 N.C. 200, 443 S.E.2d 716 (1994).

The legislature intended that the Industrial Commission's authority under § 97-25 be limited to review and approval of hospital charges to ensure, first, that the employer is charged only for those reasonably required services, and, second, that the employer is not charged more for such services than the prevailing charge for the same or similar hospital service in the same community. *Charlotte-Mecklenburg Hosp. Auth. v. North Carolina Indus. Comm'n*, 336 N.C. 200, 443 S.E.2d 716 (1994).

Excerpts From:

## MEMORANDUM

TO: Tom Bolch, N.C. Industrial Commission  
FROM: David Corum, American Insurance Association  
DATE: March 25, 1996  
SUBJECT: NC DRG data

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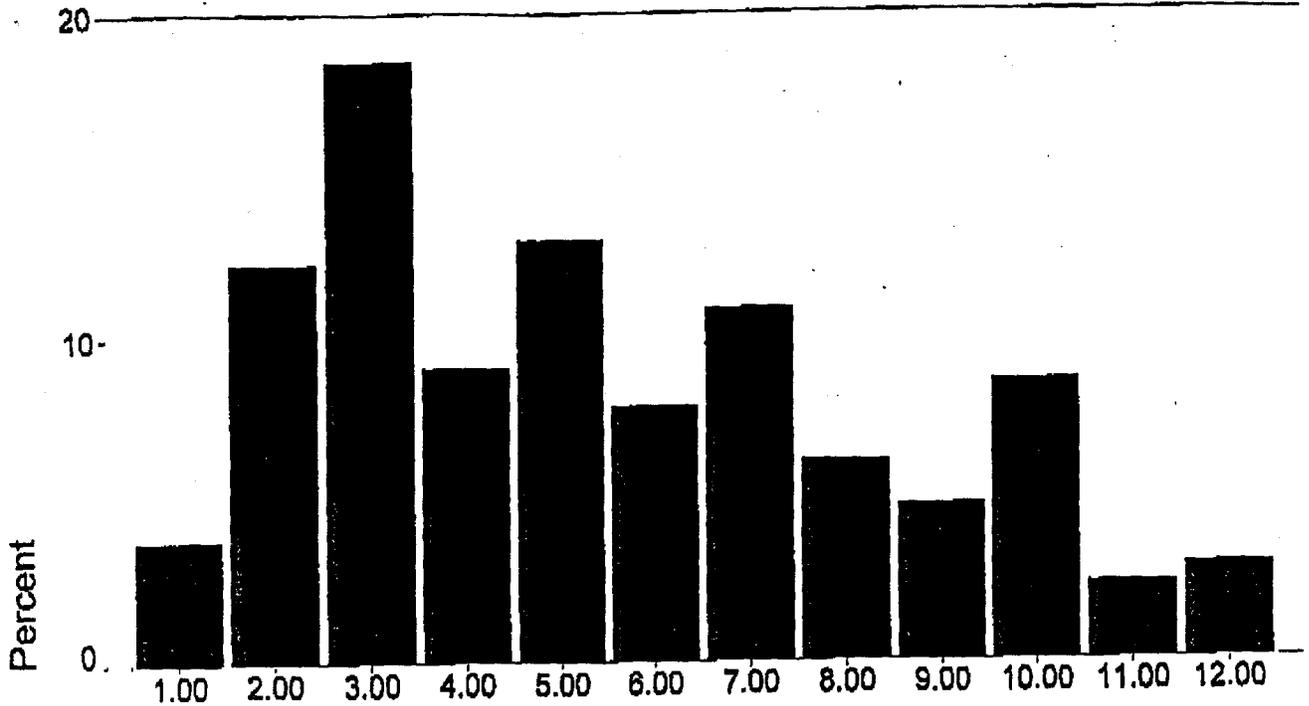
The attached pages summarize the results of my preliminary analysis of the North Carolina DRG data. I was only able to identify 190 duplicate bills, which I believe is fewer than reported earlier. The analysis was conducted for all DRGs and individually for each DRG with 30 or more hits. I will be prepared to discuss what I did and what I think it means during the meeting this afternoon. I look forward to the discussion.

cc: Alan Miles

All data concerns workers' compensation claims.

# ALL CASES (n=1411)

(Corum memo continued)



## VAR00004

- VAR00004 = 1 if DRG approval is 25% or less of the billed amount
- 2 if DRG approval is 25%-50% of the billed amount
- 3 if DRG approval is 50%-75% of the billed amount
- 4 if DRG approval is 75%-90% of the billed amount
- 5 if DRG approval is 90%-110% of the billed amount
- 6 if DRG approval is 110%-125% of the billed amount
- 7 if DRG approval is 125%-150% of the billed amount
- 8 if DRG approval is 150%-175% of the billed amount
- 9 if DRG approval is 175%-200% of the billed amount
- 10 if DRG approval is 200%-300% of the billed amount
- 11 if DRG approval is 300%-400% of the billed amount
- 12 if DRG approval is more than 400% of the billed amount

From Office of State Personnel

As a result of G.S. 97-26 (a) and (b) of the Workers' Compensation Reform Act of 1994, hospital bills being submitted to the Industrial Commission are being approved for amounts exceeding the original bill. Examples of the affect this has had on some State departments and universities are offered below. (Copies of the actual invoices and Industrial Commission Medical Bill Analyses are attached.)

Original Bill	IC Change	% Increase
\$5,190.39	\$7,025.99	35%
\$5,446.33	\$5,669.65	4%
\$3,858.72	\$6,154.20	60%

The average percentage increase is 30%.

Hospital costs are estimated to be 13.5% of total workers' compensation expenditures for the State. If the current practice of increasing hospital bills continues, the overall increase in cost to the State will be approximately 4%.

FISCAL RESEARCH DIVISION

STATE EMPLOYEE HEALTH BENEFIT PLAN  
Comparison of Hospital Inpatient Claim Costs  
 Indemnity Program Only  
 (\$ Million)

Quarter	Calendar Years			
	1995	1994	1993	1992
1st Quarter	\$ 36.073	\$ 41.785	\$ 45.573	\$ 49.912
Average No. of Enrollees	416,795	414,539	410,046	415,574
Per Capita Cost	\$ 87	\$101	\$111	\$120
% Increase (Decrease)	(13.9)%			
2nd Quarter	\$ 52.224	\$ 44.230	\$ 26.147	\$ 43.724
Average No. of Enrollees	416,979	414,801	409,863	415,583
Per Capita Cost	\$125	\$107	\$ 64	\$105
% Increase (Decrease)	16.8%			
3rd Quarter	\$ 58.396	\$ 45.417	\$ 42.744	\$ 44.285
Average No. of Enrollees	415,791	414,215	409,200	414,249
Per Capita Cost	\$140	\$109	\$104	\$107
% Increase (Decrease)	28.4%			
4th Quarter	\$ 42.903	\$ 41.190	\$ 42.433	\$ 39.940
Average No. of Enrollees	401,420	415,131	412,571	408,780
Per Capita Cost	\$107	\$ 99	\$103	\$ 98
% Increase (Decrease)	8.1%			
Annual Total	\$189.596	\$172.622	\$156.897	\$177.861
Average No. of Enrollees	412,746	414,671	410,420	413,547
Per Capita Cost	\$459	\$416	\$382	\$430
% Increase (Decrease)	10.3%	8.9%	(11.2)%	(6.1)%

(Not limited to workers' compensation claims.)

## MEMORANDUM

April 8, 1996

TO: Hospitals, Employers, Insurance Companies, Self-Insureds, TPAs

FROM: N.C. Industrial Commission (Commissioner Thomas J. Bolch, contact person)

SUBJECT: Explanation of DRG compromise

Representatives of employers, insurance carriers and selfinsurers as well as representatives of the Industrial Commission and the N.C. Hospital Association arrived at a compromise interim solution of the DRG methodology at the end of March. Under the compromise, those bills for hospital admissions from July 1, 1995, through March 31, 1996, will be handled under the DRG rules in effect in that period under the State Health Plan.

Bills for hospital admissions from 1 April 1996 through 30 June 1997 will follow the DRG methodology of the State Health Plan with the exception that they will be no lower than 90% of the itemized hospital bill and no higher than 100% of the itemized hospital bill.

Other requirements of the compromise:

1. The Industrial Commission will furnish to Hospital Providers a copy of the Bill Analysis at the same time it furnishes it to the Carrier or Third Party Administrator;

2. Bills from Hospitals that have been held unprocessed by the Industrial Commission will be processed promptly using the DRG system in effect on March 29, 1996; (some 300 or more bills where the DRG amount exceeded the hospital charges have been held unprocessed by the Commission since February 15, 1996).

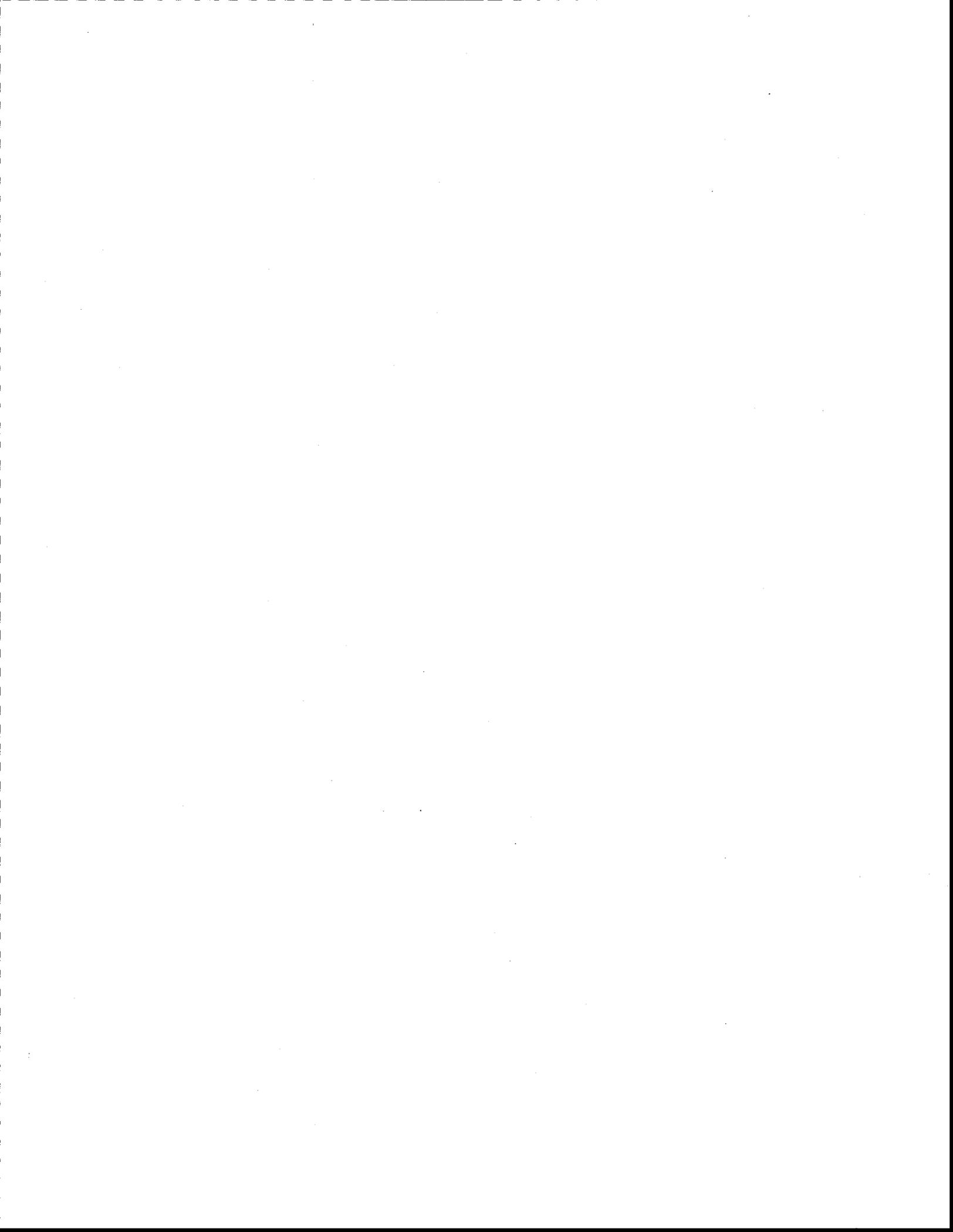
3. Correction bills furnished by the Industrial Commission will be paid according to their terms; (the Industrial Commission sent out 2 sets of

corrected bills, the first set because of a change in the low length of stay trim point used by the State Health Plan and the second because of incorrect coding by the Industrial Commission).

4. Since July 1, 1995, if a Hospital Provider has been paid less than the amount approved by the Industrial Commission, the Hospital Provider shall first try to work out the controversy with the Payor, and, failing being able to work it out to its satisfaction, may have the Commission attempt to work out the matter administratively by asking the Commission to attempt to do so or may have the bill dispute adjudicated by the Industrial Commission by filing a written request for a hearing. If the Hospital Provider payment calculated by the Commission was incorrect, the Hospital Provider is entitled to pursue its administrative and legal remedies.

5. The proposed statute attached hereto will be implemented on an interim basis by the Industrial Commission and the parties pending its enactment.

(See Legislative Proposal III).



**APPENDIX I**

**NORTH CAROLINA OFFICE OF STATE PERSONNEL  
WORKERS' COMPENSATION STATISTICAL DATA  
SUMMARY COMPARISON REPORT FYE 1991 THROUGH 1995  
& FIVE YEAR PERCENTAGE CHANGE  
TRENDS SUMMARY ANALYSIS**

**NUMBER OF EMPLOYEES INCREASED BY .08%**

**TOTAL REPORTED CASES INCREASED BY 5.2%**

**TOTAL # LOST & RESTRICTED WORDAYS INCREASED BY 7.5%**

**TOTAL NUMBER OF WC CLAIMS INCREASED BY 4.8%**

**TOTAL WC EXPENDITURES INCREASED BY 13%**

**TOTAL DOLLAR LOSS INCREASED BY 11.3%**

**TOTAL DOLLAR LOSS + PRODUCTIVITY INCREASED BY 10.6%**

**NORTH CAROLINA OFFICE OF STATE PERSONNEL  
WORKERS' COMPENSATION STATISTICAL DATA  
SUMMARY COMPARISON REPORT FYE 1991 THROUGH 1995  
& FIVE YEAR PERCENTAGE CHANGE**

ITEM	FYE 91	FYE 92	FYE 93	FYE 94	FYE 95	AVERAGE % CHANGE FOR 5 YEARS
<b>EMPLOYMENT INFORMATION</b>						
NUMBER OF EMPLOYEES	210,856	218,538	219,773	223,670	218,851	0.8%
<b>INJURIES/ILLNESSES</b>						
TOTAL REPORTED CASES	14,271	15,012	14,961	15,899	17,951	5.2%
TOTAL # OF LOST & RESTRICTED WORKDAYS	46,266	53,819	62,723	64,838	63,506	7.5%
<b>WORKERS' COMPENSATION</b>						
TOTAL NUMBER OF WC CLAIMS	10,309	11,313	11,441	12,404	12,791	4.8%
<b>ACCIDENT &amp; INJURY EXPENDITURES</b>						
TOTAL WC EXPENDITURES	\$16,604,339	\$20,631,009	\$23,831,476	\$29,336,055	\$27,419,137	13.0%
TOTAL DOLLAR LOSS	\$19,432,870	\$22,948,751	\$26,409,679	\$32,149,473	\$30,449,477	11.3%
<b>SUMMARY INFORMATION</b>						
TOTAL DOLLAR LOSS + PRODUCTIVITY	\$24,252,898	\$28,143,319	\$32,463,655	\$38,407,587	\$37,065,581	10.6%

**NORTH CAROLINA OFFICE OF STATE PERSONNEL  
REPORT ON THE  
WORKERS' COMPENSATION  
COST CONTAINMENT PILOT PROJECT**

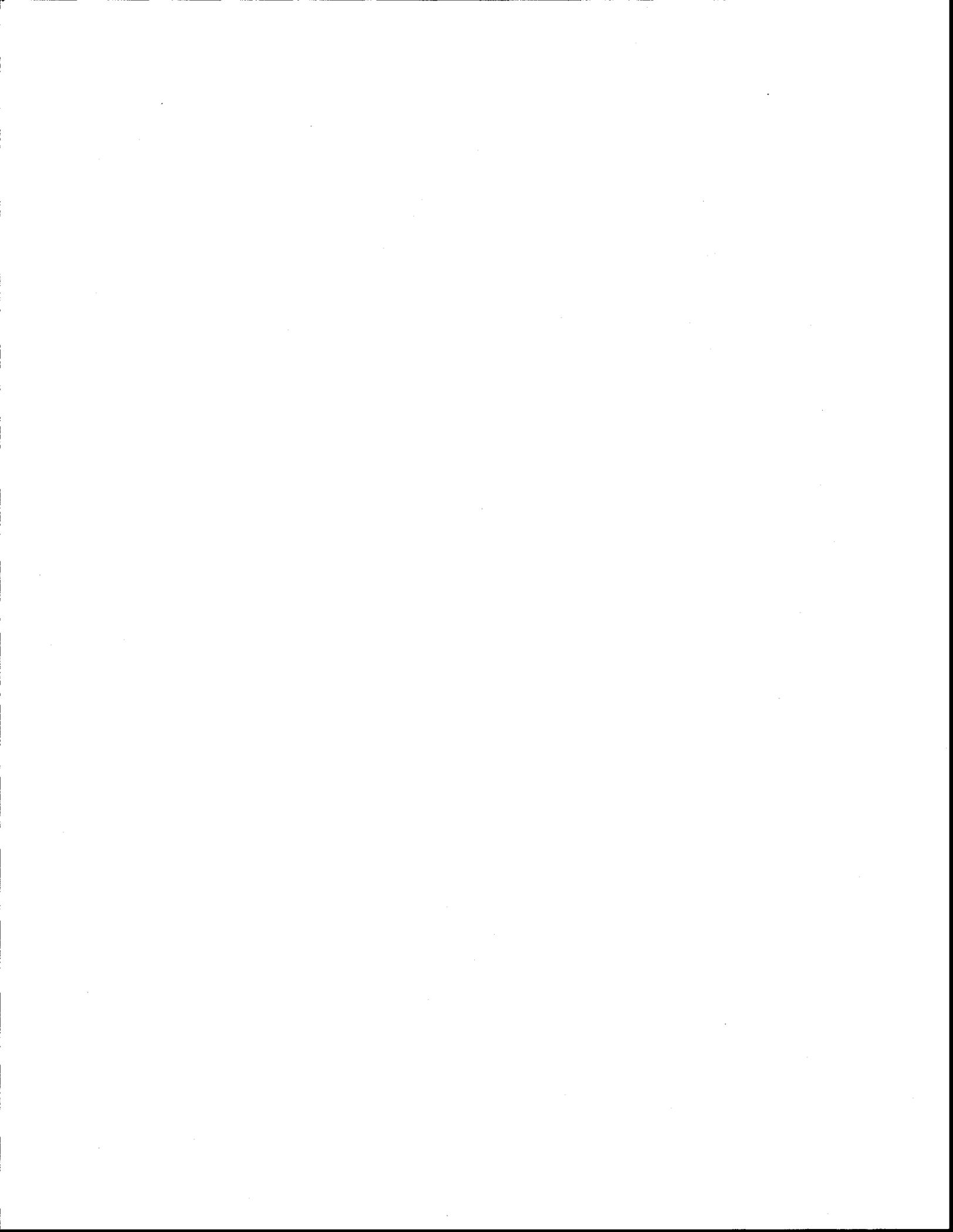
In accordance with Section 11.1 of House Bill 230, the Office of State Budget (OSBM) and the Office of State Personnel (OSP) have been engaged in the establishment of a Workers' Compensation Cost Containment Pilot Project. The legislation required the administration of workers' compensation to be handled by a Third Party Administrator (TPA) for the pilot departments and universities, with reimbursement to the TPA to be a percentage of savings.

The OSBM contracted an actuary to conduct a study and provide the methodology to determine the percentage of savings formula by projecting paid losses and associated expenses for the three year pilot period.

A committee made up of members representing OSP, OSBM, the Office of the State Controller, and seven representatives from the seventeen volunteer pilot departments and universities have prepared a Request For Proposal (RFP) to solicit bids from potential TPAs. Proposals were due February 14, 1996 and the committee is in the evaluation process, with a projected implementation date of April 1, 1996.

The 17 participating Departments and Universities are:

Administrative Office of the Courts	Appalachian State University
Crime Control & Public Safety	Department of Administration
Department of Correction	Department of Human Resources
Department of Insurance	Department of Justice
Department of Labor	Environ. Health & Nat. Resources
Governor's Office	NC A & T State University
NC State University	UNC - Chapel Hill
UNC - Charlotte	Wildlife Resources Commission
Winston-Salem State University	



LEGISLATIVE PROPOSAL I

APPENDIX J

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

96-RNZ-023

THIS IS A DRAFT 10-MAY-96 09:55:31

Short Title: WORKERS COMP/SUBCONTRACTORS

(Public)

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Sponsors:

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Referred to:

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1 A BILL TO BE ENTITLED  
2 AN ACT TO REMOVE THE REQUIREMENT FOR WORKERS' COMPENSATION  
3 COVERAGE FOR SUBCONTRACTORS WITH NO EMPLOYEES.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. G.S. 97-19 reads as rewritten:  
6 " 97-19. Liability of principal contractors; certificate that  
7 subcontractor has complied with law; right to recover  
8 compensation of those who would have been liable; order of  
9 liability.  
10 Any principal contractor, intermediate contractor, or  
11 subcontractor who shall sublet any contract for the performance  
12 of any work without requiring from such subcontractor or  
13 obtaining from the Industrial Commission a certificate, issued by  
14 a workers' compensation insurance carrier, or a certificate of  
15 compliance issued by the Department of Insurance to a self-  
16 insured subcontractor, stating that such subcontractor has  
17 complied with G.S. 97-93 hereof, shall be liable, irrespective of  
18 whether such subcontractor has regularly in service fewer than  
19 three employees in the same business within this State, to the  
20 same extent as such subcontractor would be if he were subject to  
21 the provisions of this Article for the payment of compensation  
22 and other benefits under this Article on account of the injury or  
23 death of ~~any such subcontractor, any principal or partner of such~~  
24 ~~subcontractor or~~ any employee of such subcontractor due to an

1 accident arising out of and in the course of the performance of  
2 the work covered by such subcontract. If the principal  
3 contractor, intermediate contractor or subcontractor shall obtain  
4 such certificate at the time of subletting such contract to  
5 subcontractor, he shall not thereafter be held liable to ~~any such~~  
6 ~~subcontractor, any principal or partner of such subcontractor, or~~  
7 any employee of such subcontractor for compensation or other  
8 benefits under this Article.

9 Any principal contractor, intermediate contractor, or  
10 subcontractor paying compensation or other benefits under this  
11 Article, under the foregoing provisions of this section, may  
12 recover the amount so paid from any person, persons, or  
13 corporation who independently of such provision, would have been  
14 liable for the payment thereof.

15 Every claim filed with the Industrial Commission under this  
16 section shall be instituted against all parties liable for  
17 payment, and said Commission, in its award, shall fix the order  
18 in which said parties shall be exhausted, beginning with the  
19 immediate employer.

20 The principal or owner may insure any or all of his contractors  
21 and their employees in a blanket policy, and when so insured such  
22 contractor's employees will be entitled to compensation benefits  
23 regardless of whether the relationship of employer and employee  
24 exists between the principal and the contractor."

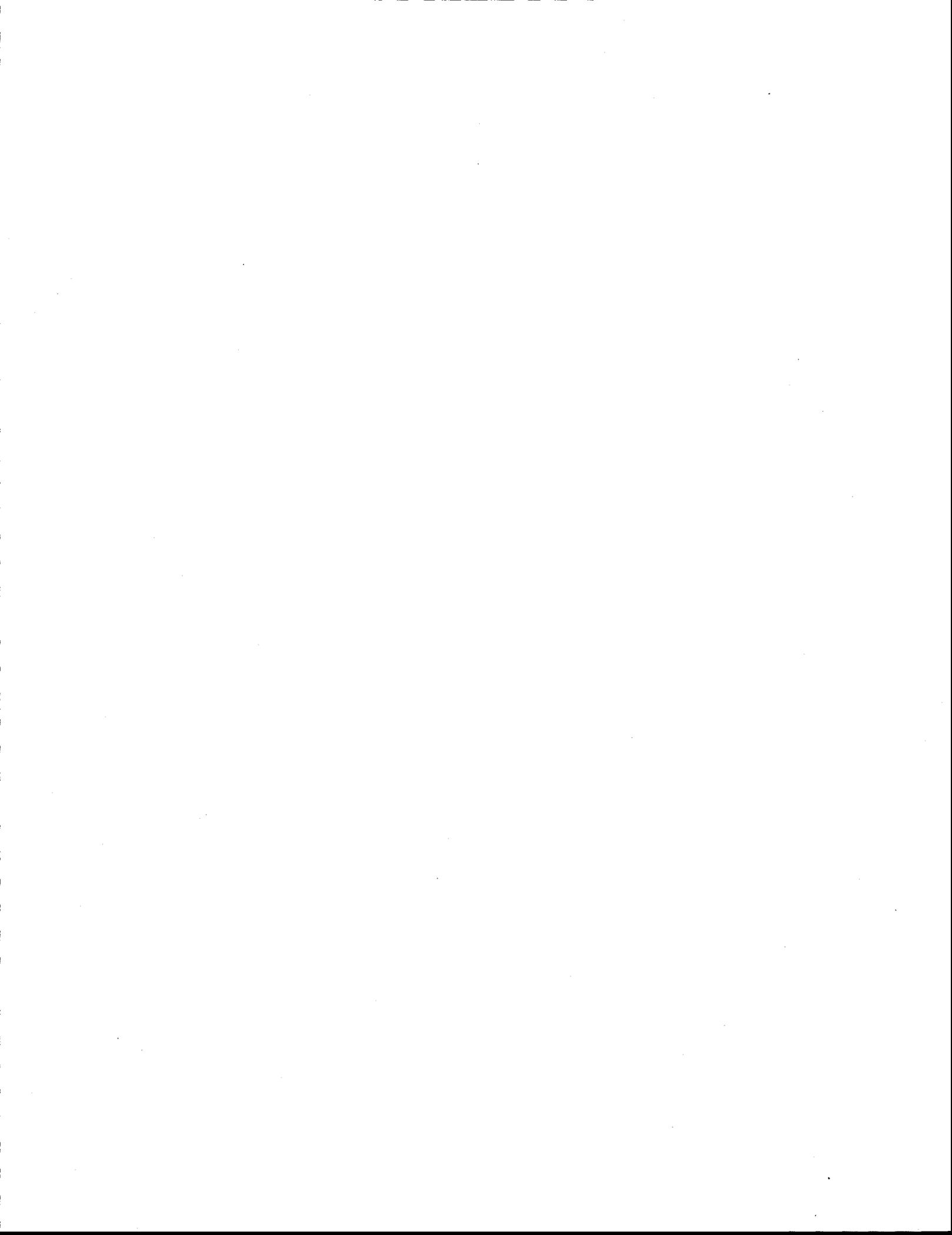
25 Sec. 2. This act is effective upon ratification.

## Summary of Legislative Proposal I

Legislative Proposal I would eliminate the requirement for subcontractors who have no employees to obtain workers' compensation coverage. This is similar to the law before 1987, with one exception: Before 1987, a subcontractor with no employees could not obtain workers' compensation coverage. Now such a subcontractor can obtain coverage.

Effective upon ratification.

(See also Appendix F, containing among other things two relevant sections of Chapter 517 of the 1995 Session Laws. Section 35 allowed subcontractors with no employees to receive workers' compensation coverage. Section 36 removed the subcontractor waiver.)



**LEGISLATIVE PROPOSAL II**  
**APPENDIX K**  
**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 1995**

**S**

**D**

95-RR-061 (     )

Short Title: VFD Workers' Comp/Appropriation.

(Public)

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Sponsors: .

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Referred to:

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1                                    A BILL TO BE ENTITLED  
2 AN ACT TO APPROPRIATE FUNDS FOR WORKERS' COMPENSATION  
3 FOR VOLUNTEER FIRE DEPARTMENT AND RESCUE/EMS  
4 WORKERS.  
5                    Whereas, the 1995 General Assembly established the Workers'  
6 Compensation Fund in the Department of Insurance to provide workers'  
7 compensation coverage to volunteer fire and rescue/EMS units; and  
8                    Whereas, the 1995 General Assembly set up funding for the  
9 Workers' Compensation Fund as follows:  
10                    (a) A required contribution to the Fund from each eligible unit,  
11                                    to be set annually by the State Fire and Rescue Commission  
12                                    as a per capita fixed dollar amount for each member of the  
13                                    unit, the amount set for 1996-97 being estimated to yield one  
14                                    million five hundred thousand dollars (\$1,500,000); and  
15                    (b) An appropriation for the 1996-97 fiscal year of an additional  
16                                    one million five hundred thousand dollars (\$1,500,000)  
17                                    directly from the General Fund,  
18 together providing a funding level of three million dollars (\$3,000,000) for the  
19 1996-97 fiscal year; and  
20                    Whereas, the Workers' Compensation Fund needs another three  
21 million dollars (\$3,000,000) for the 1996-97 fiscal year in addition to that  
22 already provided for to fully fund the workers' compensation needs of the  
23 volunteer fire and rescue/EMS units; Now therefore,  
24 The General Assembly of North Carolina enacts:

# LEGISLATIVE PROPOSAL II

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GENERAL ASSEMBLY OF NORTH CAROLINA

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SESSION 1995

1           Section 1. There is appropriated from the General Fund to the  
2 Department of Insurance for the 1996-97 fiscal year the sum of three million  
3 dollars (\$3,000,000) for the Workers' Compensation Fund established by G.S.  
4 58-87-10 to provide workers' compensation coverage for volunteer fire and  
5 rescue/EMS units.

6           Sec. 2. This act becomes effective July 1, 1996.

## Summary of Legislative Proposal II

Legislative Proposal II would appropriate \$3 million from the General Fund for the 1996-97 fiscal year to the Workers Compensation Fund the 1995 General Assembly set up to provide for workers' comp coverage for volunteer fire, rescue, and EMS workers.

When it set up the Workers' Compensation Fund, the 1995 General Assembly appropriated \$1.5 million for it in the 1996-97 fiscal year. It also directed the State Fire and Rescue Commission to set a dollar amount per capita for each member of each rescue unit, to be collected from each unit. The amount set for 1996-97 is estimated to yield \$1.5 million dollars.

The Volunteer Safety Workers' Compensation Board, also set up in the 1995 legislation, told the Study Committee that the \$3 million that will come from the two sources mentioned above will not be enough to fill the need, and that the Workers' Compensation Fund will need an additional \$3 million for 1996-97.

The Volunteer Safety Workers' Compensation Board estimates that the Workers Compensation Fund will soon become self-supporting.



**LEGISLATIVE PROPOSAL III**  
**APPENDIX L**  
**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 1995**

S

D

95-RR-063E (     )

Short Title: Hospital Reimbursement.

(Public)

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Sponsors: .

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Referred to:

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1                                    A BILL TO BE ENTITLED  
2 AN ACT TO CHANGE THE REQUIREMENT FOR HOSPITAL  
3 REIMBURSEMENT IN WORKERS' COMPENSATION CASES.  
4 The General Assembly of North Carolina enacts:  
5                    Section 1. G.S. 97-26(b) reads as rewritten:  
6        "(b) Hospital Fees. -- Payment for medical compensation rendered by a  
7 hospital participating in the State ~~Plan~~ Plan, except as otherwise provided  
8 herein, shall be equal to the payment the hospital receives for the same  
9 treatment and services under the State ~~Plan~~ Plan, provided that such payment  
10 with respect to inpatient hospital services shall not be less than ninety percent  
11 (90%) nor more than one hundred percent (100%) of the hospital's itemized  
12 charges as shown on the UB-92 claim form. A hospital's itemized charges on  
13 the UB-92 claim form for workers' compensation services shall be the same as  
14 itemized charges for like services for all other payors during the period from  
15 April 1, 1996, through June 30, 1997. Payment for a particular type of  
16 medical compensation that is not covered under the State Plan shall be based  
17 on the allowable charge under the State Plan for comparable services or  
18 treatment, as determined by the Commission. Each hospital subject to the  
19 provisions of this subsection shall be reimbursed the amount provided for in  
20 this subsection unless it has agreed under contract with the ~~insurer or~~ insurer,  
21 managed care ~~organization~~ organization, or employer to accept a different  
22 amount or reimbursement methodology."  
23                    Sec. 2. This act becomes effective April 1, 1996, and applies to  
24 hospital inpatient admissions occurring on or after that date. This act expires

# LEGISLATIVE PROPOSAL III

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GENERAL ASSEMBLY OF NORTH CAROLINA

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SESSION 1995

- 1 on June 30, 1997, and its expiration applies to all hospital inpatient admissions
- 2 occurring on or after that date.

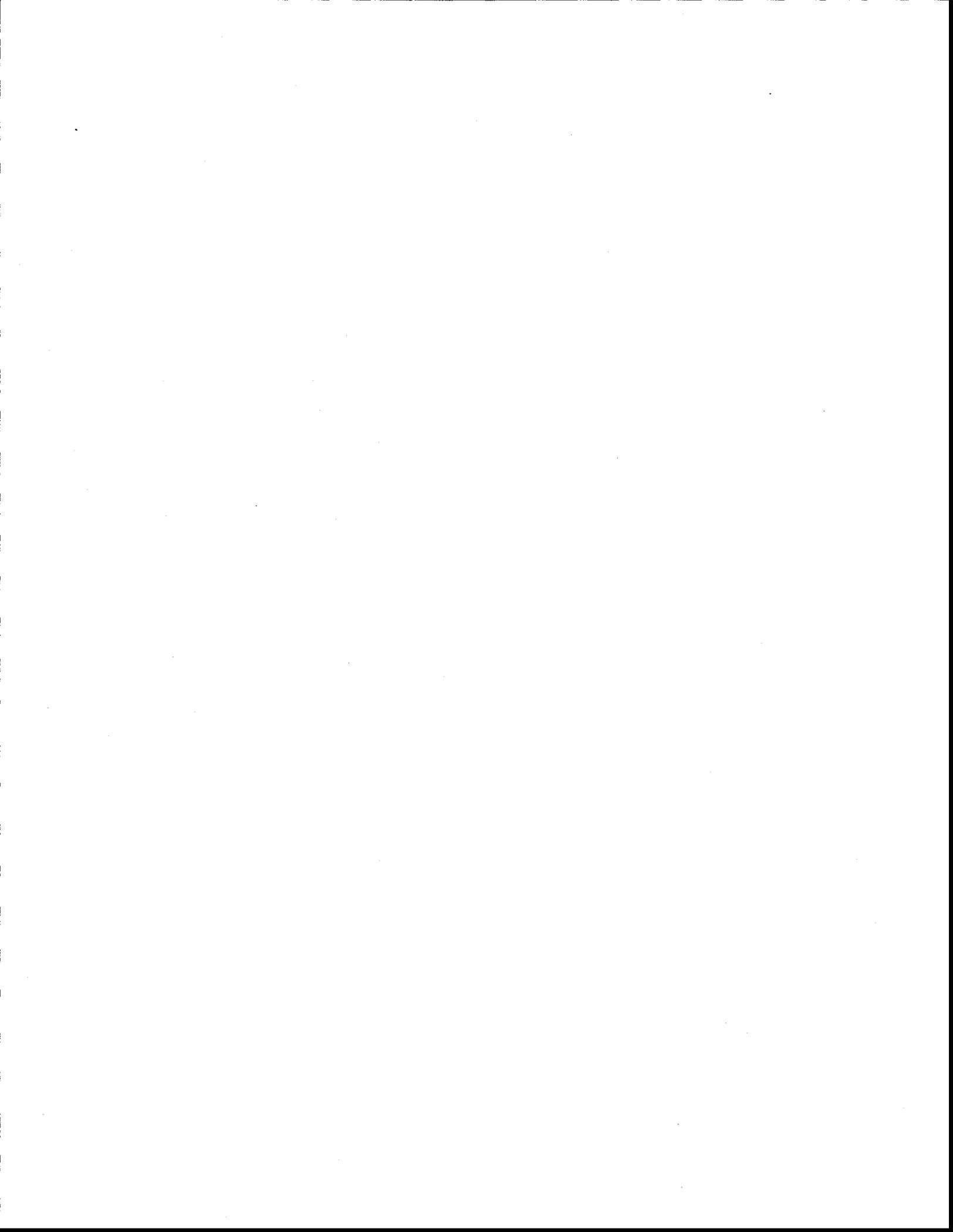
### Summary of Legislative Proposal III

Legislative Proposal III would, for an interim period from April 1, 1996 to June 30, 1997, narrow the range of reimbursement to hospitals for workers' compensation services. Current law requires that any hospital participating in the Teachers' and State Employees' Comprehensive Major Medical Plan shall receive the same reimbursement it would receive under the State Plan for medical workers' comp it provides to anyone. Since the State Plan went to the DRG (diagnostic-related grouping) method of reimbursement, some employers and insurers have objected that they have been charged amounts much higher than the amount of the bill for the service provided. DRGs is a method of classifying acute hospital in-patients based on clinical groupings according to the amount and type of hospital resources needed for treatment. The provider is reimbursed a uniform amount for each service in the grouping, regardless of what the amount billed is.

Proposal III says that for the interim period, the hospital's DRG reimbursement will not be higher than the amount the hospital actually billed the patient, and it will not be lower than 90% of the amount billed. During the interim period, hospitals would be required to keep their charges in workers' comp cases at the same level as those for comparable services in non-workers' comp cases.

Upon the sunset of this system on June 30, 1997, the law would revert to what is in effect now: the tying of workers' comp hospital reimbursements to the State Plan.

The agreement of the Hospital Association, the American Insurance Association, and the Self-Insured Employers to the contents of Legislative Proposal III was part of a larger agreement that is included at Appendix H.



**LEGISLATIVE PROPOSAL IV**  
**APPENDIX M**  
**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 1995**

H

D

House 96-RNZ-007  
THIS IS A DRAFT 9-APR-96 13:41:05

Short Title: WORKERS COMP PAUPER APPEALS

(Public)

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Sponsors:

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Referred to:

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x

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO REMOVE LANGUAGE REQUIRING AN ATTORNEY'S OPINION AND  
3 WRITTEN STATEMENT IN APPEALS BY INDIGENTS FROM THE INDUSTRIAL  
4 COMMISSION TO THE NORTH CAROLINA COURT OF APPEALS.  
5 The General Assembly of North Carolina enacts:  
6       Section 1. G.S. 97-86 reads as rewritten:  
7       "§ 97-86. Award conclusive as to facts; appeal; certified  
8 questions of law.  
9       The award of the Industrial Commission, as provided in G.S. 97-  
10 84, if not reviewed in due time, or an award of the Commission  
11 upon such review, as provided in G.S. 97-85, shall be conclusive  
12 and binding as to all questions of fact; but either party to the  
13 dispute may, within 30 days from the date of such award or within  
14 30 days after receipt of notice to be sent by registered mail or  
15 certified mail of such award, but not thereafter, appeal from the  
16 decision of said Commission to the Court of Appeals for errors of  
17 law under the same terms and conditions as govern appeals from  
18 the superior court to the Court of Appeals in ordinary civil  
19 actions. The procedure for the appeal shall be as provided by the  
20 rules of appellate procedure.  
21       The Industrial Commission of its own motion may certify  
22 questions of law to the Court of Appeals for decision and  
23 determination by said Court. In case of an appeal from the  
24 decision of the Commission, or of a certification by said

# LEGISLATIVE PROPOSAL IV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

1 Commission of questions of law, to the Court of Appeals, said  
2 appeal or certification shall operate on a supersedeas except as  
3 provided in G.S. 97-86.1, and no employer shall be required to  
4 make payment of the award involved in said appeal or  
5 certification until the questions at issue therein shall have  
6 been fully determined in accordance with the provisions of this  
7 Article. If the employer is a noninsurer, then the appeal of such  
8 employer shall not act as a supersedeas and the plaintiff in such  
9 case shall have the same right to issue execution or to satisfy  
10 the award from the property of the employer pending the appeal as  
11 obtains to the successful party in an action in the superior  
12 court.

13 When any party to an appeal from an award of the Commission is  
14 unable, by reason of his poverty, to make the deposit or to give  
15 the security required by law for said appeal, any member of the  
16 Commission or any deputy commissioner may, in their discretion,  
17 enter an order allowing said party to appeal from the award of  
18 the Commission without giving security therefor. The party  
19 appealing from the judgment shall, within 30 days from the filing  
20 of the appeal from the award, make an affidavit that he is unable  
21 by reason of his poverty to give the security required by law,  
22 ~~and that he is advised by a practicing attorney that there is~~  
23 ~~error in the matters of law in the award of the Commission in~~  
24 ~~said case. The affidavit must be accompanied by a written~~  
25 ~~statement from a practicing attorney of North Carolina that he~~  
26 ~~has examined the affiant's case and is of the opinion that the~~  
27 ~~decision of the Commission in said case is contrary to law. law.~~  
28 The request shall be passed upon and granted or denied by a  
29 member of the Commission or deputy commissioner within 20 days  
30 from receipt of the affidavit and letter as specified above."

31 Sec. 2. This act becomes effective October 1, 1996, and  
32 applies to all appeals by indigents from an order of the  
33 Industrial Commission on or after that date.

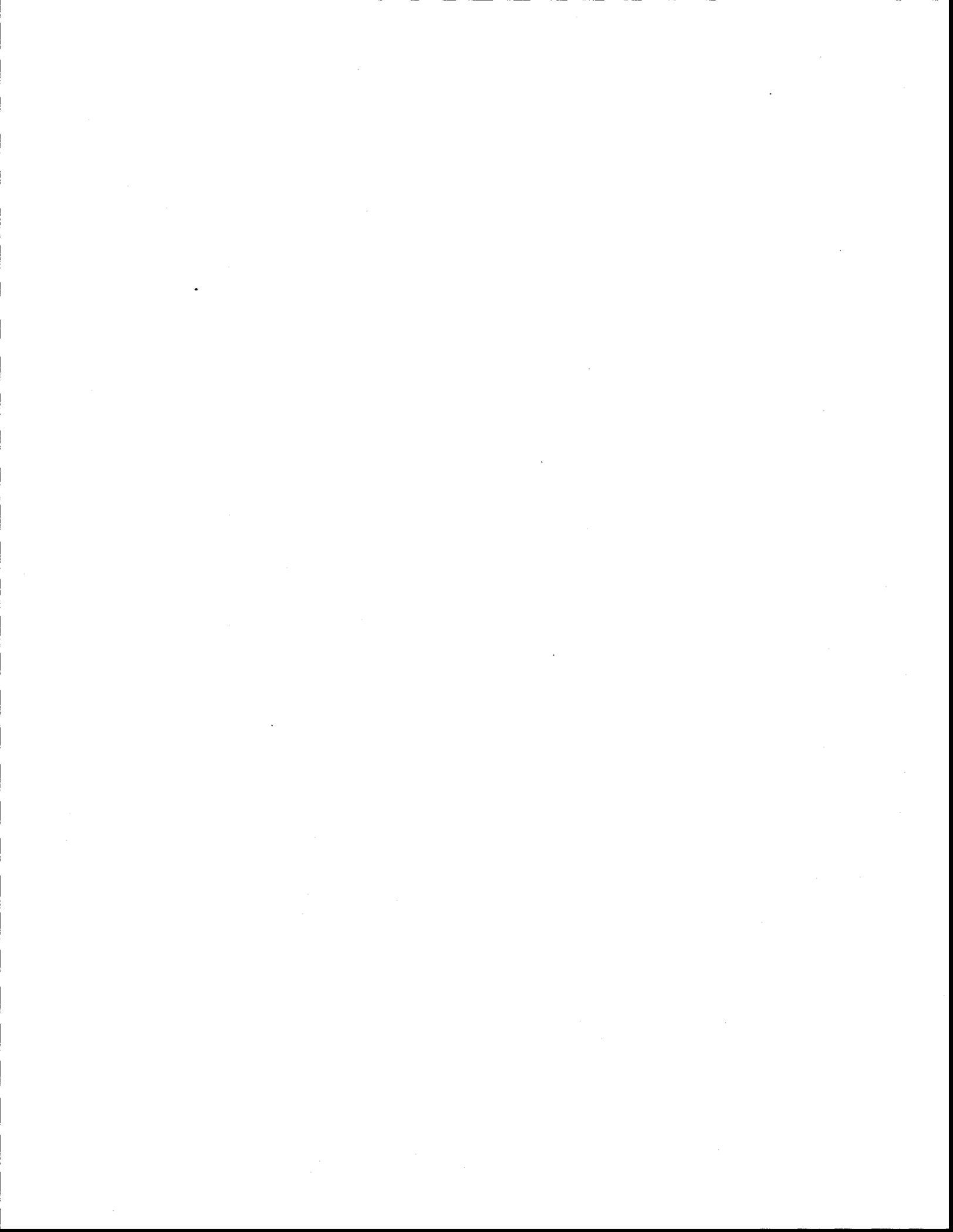
## Summary of Legislative Proposal IV

Legislative Proposal IV removes the requirement for attorney certification of the merits of an appeal by an indigent person of a Industrial Commission decision to the North Carolina Court of Appeals.

Currently, an indigent party who appeals a workers' compensation decision by the Industrial Commission to the Court of Appeals must have an affidavit from a practicing attorney that says that the attorney has reviewed the case and believes the appeal has merit. Other appellants must post a bond when they appeal a Commission decision to the Court of Appeals, but indigents cannot afford to post bond. Thus, the attorney certification requirement serves as a check against frivolous appeals by indigents.

Last session, however, the General Assembly removed an identical requirement for indigents appealing claims from the trial courts to the Court of Appeals (G.S. 1-288). There is no compelling reason to retain the attorney certification requirement for appeals of workers' compensation decisions. A person still must prove his or her indigency in order to appeal as an indigent. The decision to allow the appeal as an indigent rests in the discretion of a commissioner or deputy commissioner of the Industrial Commission.

The bill would be effective October 1, 1996, and would apply to all appeals by indigents on or after that date.





# LEGISLATIVE PROPOSAL V

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1 section for the purpose of coercing or attempting to coerce the  
2 employee into agreeing to compensation under this Article shall  
3 be guilty of a ~~Class 1 misdemeanor~~ Class H felony.

4 (d) The Commission shall not be liable in a civil action for  
5 any action made in good faith under this section, including the  
6 identification and referral of a person for investigation and  
7 prosecution for an alleged administrative violation or criminal  
8 offense. Any person, including, but not limited to, an attorney,  
9 an employee, an employer, an insurer, and an employee of an  
10 insurer, who in good faith comes forward with information under  
11 this section, shall not be liable in a civil action.

12 (e) The Commission shall report annually to the General  
13 Assembly on the number and disposition of investigations  
14 involving claimants, employers, insurance company officials,  
15 officials of third-party administrators, insurance agents,  
16 attorneys, health care providers, and vocational rehabilitation  
17 providers."

18 Sec. 2. G.S. 97-88.3 reads as rewritten:

19 "§ 97-88.3. Penalty for health care providers.

20 (a) In addition to any liability under G.S. 97-88.2, any  
21 health care provider who willfully or intentionally undertakes  
22 the following acts is subject to an administrative penalty,  
23 assessed by the Commission, not to exceed ten thousand dollars  
24 (\$10,000):

- 25 (1) Submitting charges for health care that was not  
26 furnished;
- 27 (2) Fraudulently administering, providing, and  
28 attempting to collect for inappropriate or  
29 unnecessary treatment or services; or
- 30 (3) Violating the provisions of Article 28 of Chapter  
31 90 of the General Statutes.

32 A penalty assessed by the Commission for a violation of  
33 subdivision (3) of this subsection is in addition to penalties  
34 assessed under G.S. 90-407.

35 (b) In addition to any liability under G.S. 97-88.2, any  
36 health care provider who willfully or intentionally undertakes  
37 the following acts is subject to an administrative penalty,  
38 assessed by the Commission, not to exceed one thousand dollars  
39 (\$1,000):

- 40 (1) Failing or refusing to timely file required reports  
41 or records;
- 42 (2) Making unnecessary referrals; and
- 43 (3) Knowingly violating this Article or rules  
44 promulgated hereunder, including treatment

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1 guidelines, with intention to deceive or to gain  
2 improper advantage of a patient, employee, insurer,  
3 or the Commission.

4 (c) A health care provider who knowingly charges or otherwise  
5 holds an employee financially responsible for the cost of any  
6 services provided for a compensable injury under this Article is  
7 guilty of a ~~Class 1 misdemeanor~~, Class H felony.

8 (d) Any person, including, but not limited to, an employer, an  
9 insurer, and an employee of an insurer, who in good faith comes  
10 forward with information under this section, shall not be liable  
11 in a civil action.

12 (e) Information relating to possible violations under this  
13 section shall be reported to the Commission which shall refer the  
14 same to the appropriate licensing or regulatory board or  
15 authority for the health care provider involved.

16 (f) A hospital that relies in good faith on a written order of  
17 a physician in performing health care services shall not be  
18 subject to an administrative penalty in violation of this  
19 section."

20 Sec. 3. This act becomes effective October 1, 1996, and  
21 applies to offenses occurring on or after that date.

## Summary of Legislative Proposal V

Legislative Proposal V conforms the penalty for workers' compensation fraud to the penalty for insurance fraud generally. It also makes similar changes to fraud provisions added in the 1994 workers' compensation reform law.

The current penalty for workers' compensation fraud under the workers' compensation fraud law (G.S. 97-88.2(a)) is a Class 1 misdemeanor. However, a person who commits workers compensation fraud under G.S. 97-88.2 also commits the elements of the crime of insurance fraud under the insurance fraud law (G.S. 58-2-161). A violation of the insurance fraud law was a Class I felony until upgraded by the General Assembly last year to a Class H felony.

Because it is unclear which law might be found controlling for workers' compensation fraud cases, this proposal reconciles the two by making them both Class H felonies and by tying the punishment provisions for workers' compensation fraud to the insurance fraud law. Both fraud laws already apply to the fraudulent obtaining of benefits by employees as well as the fraudulent denial of benefits by employers or insurers.

The proposal would also raise to Class H felonies the penalties for coercing an employee to settle and for a health care provider charging an employee for medical services incurred for treatment of a compensable workers' compensation injury.

The bill would be effective October 1, 1996, and would apply to offenses committed on or after that date.



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April 25, 1996

**MEMORANDUM**

**TO: Senator John Kerr  
Representative J. Shawn Lemmond  
Co-Chairs, Worker's Compensation Legislative Research Commission**

**FROM: Jim Mills *Jm*  
Fiscal Research Division**

**SUBJECT: Fiscal Analysis -- Workers' Compensation Fraud Charges**

After discussions with the Administrative Office of the Courts and the Sentencing and Policy Advisory Commission, the Fiscal Research Division has determined the following:

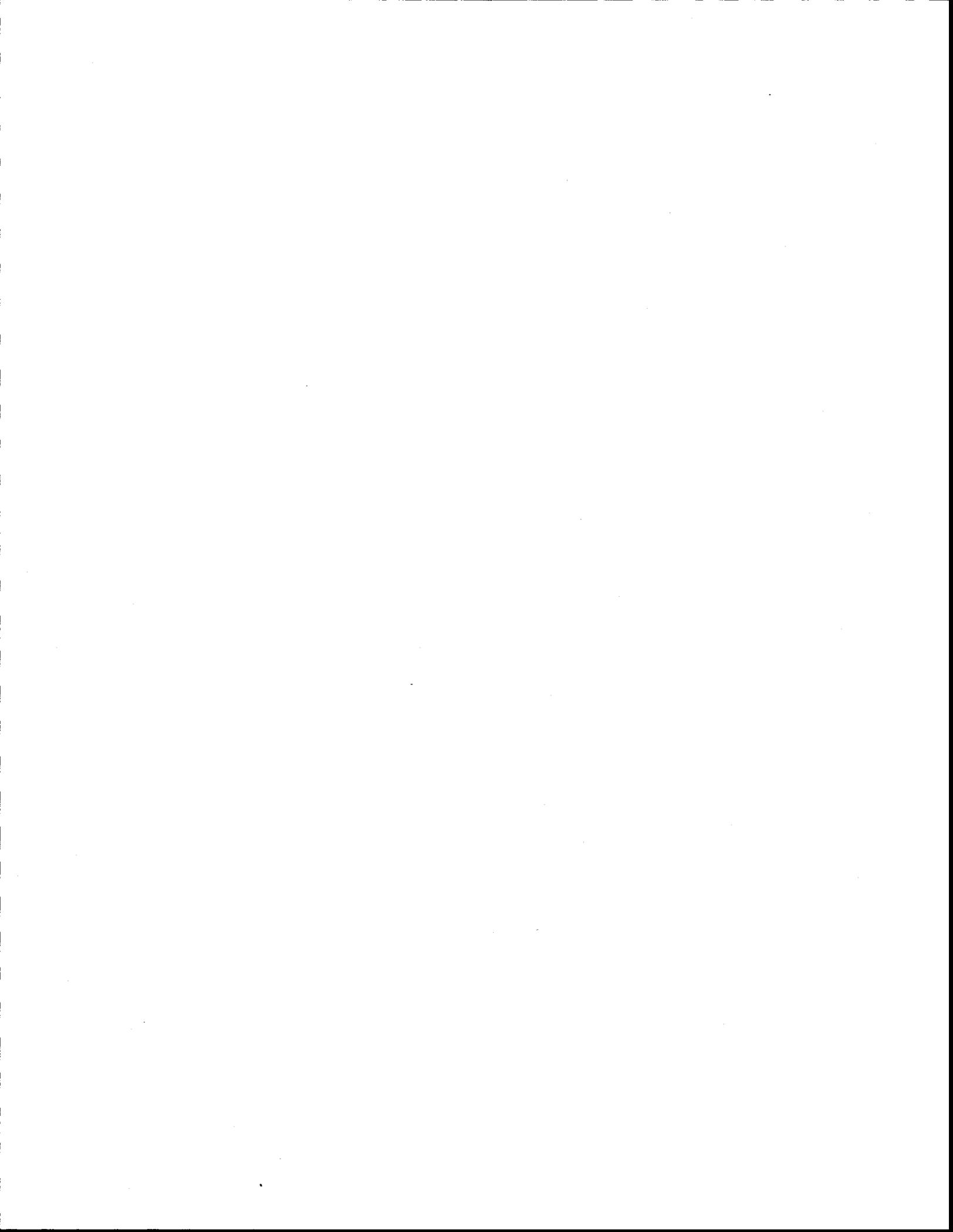
The Administrative Office of the Courts establishes specific data codes for all offenses, except those committed in very small numbers. Regarding the proposed change in penalties for worker's compensation fraud, the assumption is that since there is no data code for worker's compensation fraud, that few offenses are committed and even fewer would result in jury trials, the primary cost driver. Therefore, there is no anticipated fiscal impact to the Judicial Department.

Consequently, the Sentencing and Policy Advisory Commission also concludes that there would be little or no increase in prison population. For example, if there were ten convictions, there may be an increase of six inmates. Our future prison capacity can easily accommodate the small number of offenders likely to be sent to prison. Therefore, there is no fiscal impact to Corrections.

Please let me know if you need additional information.

cc: Linwood Jones







# LEGISLATIVE PROPOSAL VI

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1 with Article 36 of this Chapter, except that no deviation is required to be filed  
2 with the Rate Bureau.

3 The Commissioner shall approve a request filed for a deviation to reduce  
4 premiums or contributions or provide discounts if the filed request is  
5 accompanied by competent, independent financial and actuarial information.  
6 Despite the provisions of G.S. 58-36-30(c), a deviation shall not be required to  
7 apply uniformly to all classifications. The Commissioner may deny a filed  
8 request for a deviation only if he finds, after notice and a public hearing, that  
9 the deviation would result in a hazardous financial condition to the group,  
10 based on financial, actuarial or other information. The public hearing shall be  
11 held within 45 days after the requested deviation is filed in its entirety, and the  
12 Commissioner shall give at least 14 days' notice of the hearing to the person  
13 filing the request and to other persons designated by the Commissioner. The  
14 Commissioner shall make a determination as expeditiously as reasonably  
15 practicable after the conclusion of the hearing, provided that the request shall  
16 be deemed approved unless denied within 60 days after it was filed in its  
17 entirety.

18 'Hazardous financial condition', for purposes of this subsection, means that,  
19 based on its present or reasonably anticipated financial condition, a group,  
20 although not yet financially impaired or insolvent, is unlikely to be able:

- 21 (1) To meet obligations with respect to known claims and  
22 reasonably anticipated claims; or  
23 (2) To pay other obligations in the normal course of business."  
24 Sec. 3. This act is effective upon ratification.

## Legislative Proposal VI

Legislative Proposal VI would correct an outdated references to rate-making in Chapter 471 (Senate Bill 931, Self-Insured Workers' Comp Funds) and Chapter 505 (Senate Bill 973, Loss Costs) of the 1995 Session Laws. Both contained outdated references to rate-making as it occurred before the enactment of the loss costs method.

Effective upon ratification.